Office Supreme Court
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No. 34174

IN THE

Supreme Court of Illinois

SEPTEMBER TERM, A. D. 1956.

CHICAGO LAND CLEARANCE COMMISSION, a municipal corporation,
Petitioner-Appellee,
vs.
IRMA G. ROSENAU, et al.,
Respondents,
FLORENCE KOSTNER,
Respondent-Appellant.

Appeal from the Circuit Court of Cook County.

Honorable Ezra Clark, Trial Judge.

Abstract of Record

JOSEPH O. KOSTNER
and
MORTIMER, NOLAN, O'MALLEY & DUNNE
105 South LaSalle Street
Chicago 3, Illinois
Attorneys for Respondent-Appellant

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IN THE

SUPREME COURT OF ILLINOIS

SEPTEMBER TERM, A. D. 1956.

CHICAGO LAND CLEARANCE COMMISSION, a municipal corporation, Petitioner-Appellee, vs. IRMA G. ROSENAU, et al., Respondents, FLORENCE KOSTNER, Respondent-Appellant.	Appeal from the Circuit Court of Cook County. Honorable Ezra Clark, Trial Judge.

ABSTRACT OF RECORD.

Page of Record

1 Placita.

3-46 Petition to Condemn.

Paragraphs 1 to 7 of Petition to Condemn allege existance, creation, and organization of the Chicago Land Clearance Commission.

6 8. That on the 28th day of March, 1951, your Petitioner determined that the following described area which consists of more than two (2) acres, situated entirely within the territorial boundaries of said City of Chicago, is a "slum and blighted area" as defined by the "Blighted Areas Redevelopment Act of 1947", as amended, which should be acquired by this Petitioner as a redevelopment project pursuant to the provisions of said Act:

A tract of land in the South West Quarter (SW 1/4) of Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois, and bounded by a line described as follows: Commencing at a point on the South line of West Polk Street, being its intersection with the West line of South Canal Street; thence South along the West line of South Canal Street to its intersection with the North line of Cabrini Street; thence West along the North line of Cabrini Street to its intersection with the East line of South Clinton Street; thence South along the East line of South Clinton Street to its intersection with the South line of West Arthington Street; thence east along the South line of West Arthington Street to its intersection with the West line of South Canal Street; thence South along the West line of South Canal Street to its intersection with the North line of West Roosevelt Road; thence West along the North line of Roosevelt Road to its intersection with the Easterly line of the proposed South Route of the Comprehensive Superhighway System as determined by ordinance of the City Council of the City of Chicago (Journal of Proceedings of the City Council, dated June 25, 1947, Pages 471-494); thence northwesterly, and thence northeasterly along the easterly line of the proposed South Route of the Comprehensive Superhighway System to its intersection with the South line of West Polk

Street; thence East along the South line of West Polk Street to its intersection with the West line of South Desplaines Street; thence South along the West line of South Desplaines Street to its intersection with the South line of West Cabrini Street; thence East along the South line of West Cabrini Street to its intersection with the East line of South Jefferson Street; thence North along the East line of South Jefferson Street to its intersection with the South line of West Polk Street; thence East along the South line of West Polk Street to the place of beginning.

that such determination was evidenced by resolution adopted by your Petitioner on said 28th day of March, 1951, and set forth in the records of this Petitioner. A certified copy of such resolution evidencing said determination as aforesaid was delivered to the State Housing Board of the State of Illinois and to the City Council of the City of Chicago. The area covered by such determination has, since the said 28th day of March, 1951, been known and referred to, and will hereinafter be referred to herein, as "Slum and Blighted Area Redevelopment Project No. 3." Said determination as evidenced by said resolution of your Petitioner was approved by the City Council of the City of Chicago by an ordinance entitled "To Approve the Determination of the Chicago Land Clearance Commission that Slum and Blighted Area Redevelopment Project No. 3 should be Acquired for Redevelopment;" the said ordinance was passed by

the City Council of the City of Chicago on the 11th day of October, 1951, and deposited in the office of the City Clerk of the City of Chicago on the 11th day of October, 1951, said ordinance having been approved and signed by the Mayor of said City of Chicago on the 19th day of October, 1951, and said determination as evidenced by said resolution of your Petitioner was approved by said State Housing Board by resolution duly adopted on the 7th day of November, 1951.

9. That the purpose for which the property included within Slum and Blighted Area Redevelopment Project Number 3 is sought to be taken is to acquire a slum and blighted area, to clear said area by demolition or removal of the existing buildings and structures thereon, to install, repair, construct and reconstruct streets, utilities and site improvements essential to the preparation of sites for use in accordance with a redevelopment plan pursuant to the provisions of the "Blighted Areas Redevelopment Act of 1947" and to convey the real property thus acquired for use in accordance with said redevelopment plan, or to accomplish a combination of the foregoing to carry out said redevelopment plan.

10. That the acquisition of said property, its clearance and preparation for use in accordance with such redevelopment plan, is a public work and is for a public purpose.

11. That after its due creation and organization, and pursuant to the Act and all applicable statutes, ordinances and resolutions,

8. Petitioner undertook to acquire, by gift or purchase, the unconditional fee simple title to the property lying within Redevelopment Project Number 3, including all private rights in streets and alleys, and has acquired certain of the parcels of real property lying within said area, but compensation to be paid by Petitioner for and in respect of certain of the parcels of real property hereinafter described (all of which lies within said Redevelopment Project Number 3), including easements, reversionary interests and other rights in the streets, alleys and other public places, cannot be agreed upon by Petitioner and the parties interested therein who are capable of consenting and who are residents of this State, and whose places of residence are known to Petitioner, although diligent effort has been made so to agree, and the owners of other parcels of real property hereinafter described are incapable of consenting, or their names and residences are unknown to Petitioner, or they are non-residents of this State, and Petitioner has been unable to acquire any of the said parcels of real property by gift or purchase.

12. That the acquisition of parcels of real property hereinafter described, including the easements, reversionary interests and other rights hereinabove described in the streets, alleys and other public places lying within said Slum and Blighted Area Redevelopment Project Number 3 is necessary for slum clearance and eradication and the accomplishment of said redevelopment project; and

Petitioner became and is vested under the Act with the power to exercise the right of eminent domain and accordingly this Petitioner seeks to acquire for the uses and purposes aforesaid:

(1) Full and clear fee simple title to the parcels of real property hereinafter described, including all improvements thereon and appurtenances thereto, and all interest therein and rights incident thereto of every kind and nature, including also streets and alleys public or private, excepting the rights of the City of Chicago in and to said streets and alleys.

(2) All right, title and interest which the owners of or parties interested in said parcels have in and to the streets and alleys upon which said parcels of real property abut.

13. That all persons whose names are hereinafter set forth as being interested as owners or otherwise in the parcels of real property hereinafter described, as appearing of record and known to Petitioner, are hereby made parties defendant to this cause.

14. That the real property herein sought to be acquired and appropriated and the names of all parties interested therein, as aforesaid, are hereinafter set forth and shown in numbered parcels (all of which parcels lie within said Redevelopment Project Number 3 as aforesaid, and within Cook County, Illinois) are as follows:

12 PARCEL 1-9

Lot 3 in Hopkinsons Subdivision of Lot 14 in Elijah K. Hubbard's Subdivision of Block 57 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian; Also the East half of Clinton Street West of and adjoining said Lot 3, all in Cook County, Illinois.

Owner Of Record: Florence D. Kostner

Other Persons Having Or Claiming An Interest: Foster Schultz; Albert Plumbing and Heating Company, Inc.; Ever Seal Window Co.; State Bank of Clearing, a corporation; John C. Nixon

18 PARCEL 4-56

Lot 5 in McCagg and others Subdivision of Lots 8 to 11 in Hubbards Subdivision of Block 58 in School Section Addition to Chicago in the East half of the South West quarter of Section 16, Township 39 North, Range 14, East of the Third Principal Meridian; Also the West half of alley lying East and adjoining said Lot 5, all in Cook County, Illinois.

Owner Of Record: Florence D. Kostner

Other Persons Having Or Claiming An Interest: Foster Schultz; Alert Plumbing and Heating Company, Inc.; Ever Seal Window Co.; State Bank of Clearing, Inc. (an Ill. corp.)

Wherefore, your Petitioner prays:

(1) That process may issue against the persons named as parties defendant in this petition;

(2) That due notice according to law may be given to the owners of and parties interested in, and to The Unknown Owners of said real property aforesaid:

(3) That the respective rights and interests of the respective parties hereinabove named as defendants may be inquired into and ascertained by this Honorable Court;

(4) That the compensation which this Petitioner shall pay for the parcels of real property hereinabove particularly described, together with all improvements thereon and all right, title and interest which the owners of or parties interested in said parcels of real property have in and to the streets and alleys upon which said parcels of real property abut, may be determined and ascertained according to law;

(5) That such other and further proceedings may be had and taken in the premises as may be appropriate fully and completely:

(a) To vest your Petitioner with full and clear fee simple title to all of the real property hereinabove described included in the parcel descriptions as hereinabove set forth and each and every part thereof, including all improvements thereon and appurtenances thereto, and all interests therein and rights incident thereto of every kind and nature, free and clear of all claims, liens,

easements and all other rights of whatsoever character, excepting the rights of the City of Chicago in and to the public streets and alleys; and

(b) To vest your Petitioner with all right, title and interest whatsoever of the defendants hereto and persons claiming under them in and to the streets and alleys which abut upon any and all parcels hereinabove described.

46 (6) That upon payment of the compensation determined, ascertained and assessed pursuant to any judgment order entered hereunder, and further upon the presentation of evidence of such payment and the filing of a certified copy of any such judgment order in the office of Joseph T. Baran, Registrar of Titles of Cook County, Illinois, or his successor or successors, said Joseph T. Baran, or his successor or successors, be directed and ordered to transfer the fee simple title to the premises or that part thereof that may be registered in the office of the Registrar of Titles of Cook County, Illinois, and included in any such judgment order, without the surrender and cancellation of any outstanding duplicate certificate of title, and to cancel the certificate of title, and to issue a new owner's duplicate certificate of title to the Petitioner herein for all or that part of said premises registered in the office of the said Registrar of Titles and included in any such judgment order.

(7) That this Honorable Court may order the distribution of the compensation to the parties thereto entitled according to their respective rights, interest and ownership; and

(8) That such proceedings may be had and taken and judgment and orders entered, and that your Petitioner have such other and further relief in the premises as the nature of the case may require.

Chicago Land Clearance Commission
By: /s/ Elsa C. Beck
Elsa C. Beck, Chief Attorney
/s/ William F. Morrissey
William F. Morrissey, Attorney

48 Appearance of Florence Kostner and others by Arvey, Hodes & Mantynband and James A. Harrington, filed May 14, 1953.

53 Notice and Motion filed September 14, 1953, which (omitting caption) is in words and figures as follows:

NOTICE

TO: George P. Latchford, Jr.
128 N. Wells Street
Chicago, Ill.

James A. Harrington
One N. LaSalle St.
Chicago, Ill.

David S. Chesrow
I. B. Padorr
134 S. LaSalle St.
Chicago, Ill.

Elda Bucholz
615 North 11th Ave.
Melrose Park, Ill.

Otto F. Ring
11 S. LaSalle St.
Chicago, Ill.

Anthony Tortoriello,
552 W. Cabrini St.
Chicago, Ill.

Joseph DeLia
548 W. Cabrini St.
Chicago, Ill.

Austin Murphy
624 S. Elmwood
Oak Park, Ill.

John B. Stephan
209 S. LaSalle St.
Chicago, Ill.

John F. Power
309 W. Jackson Blvd.
Chicago, Ill.

Julia Ruzicka and
Louis J. Ruzicka
4727 W. Congress Parkway
Chicago, Ill.

Charles A. Stone
2750 W. Rascher
Chicago, Ill.

Boyle & Friedman
77 W. Washington St.
Chicago, Ill.

Margaret E. Mara and
Edward Mara, her husband
5307 W. 22nd Place
Cicero, Ill.

Maurice J. Costello
38 S. Dearborn St.
Chicago, Ill.

William O. Krohn
100 N. LaSalle St.
Chicago, Ill.

Antonia Sabia
1713 N. Natoma
Chicago, Ill.

Emily Gentile
c/o Mrs. Russo
834 Washington Blvd.
Oak Park, Ill.

Otillie R. Smart Rank and
Henry Rank, her husband
115 W. Park
Villa Park, Ill.

Kirkland, Fleming, Green,
Martin & Ellis
33 N. LaSalle St.
Chicago, Ill.

Veronica Schultz Duda
1257 W. Lunt Ave., Rm. 224
Chicago, Ill.

Irving Goodman
33 N. LaSalle St.
Chicago, Ill.

Wexler & Wexler
134 N. LaSalle St.
Chicago, Ill.

Myles A. Grill
5900 W. Cermak Rd.
Cicero, Ill.

Nathan Glick
Bernard S. Weistein
77 W. Washington
Chicago, Ill.

Mary Deletto
830 S. Garabaldi
Chicago, Ill.

Rose Millella
7415 N. Western Ave.
Chicago, Ill.

Dorothy Yasella
1028 S. Sangamon
Chicago, Ill.

Christopher Yasella
Michael Yasella
250 W. 24th Place
Chicago, Ill.

Margaret Manella
Rosemary Manella
James Manella
Peter Manella
Daniel Manella
Anthony Manella
William Manella
7229 N. Bell
Chicago, Ill.

Martin J. McNally
Nash, Ahern & McNally
111 W. Washington St.
Chicago, Ill.

Edward G. Bicek
105 W. Madison St.
Chicago, Ill.

Deming, Jarrett & Mulfinger
33 N. LaSalle St.
Chicago, Ill.

Riordan & Linklater
105 W. Adams St.
Chicago, Ill.

Jacob Shamberg
111 W. Washington St.
Chicago, Ill.

James D. Smith
4855 W. Wabansia
Chicago, Ill.

Rose McHugh
Lawrence McHugh
4869 W. Wabansia
Chicago, Ill.

Frances J. Kennedy
135 S. LaSalle St.
Chicago, Ill.

Orrin M. Richman
546 W. Roosevelt Rd.
Chicago, Ill.

Herbert G. Silver
5313 S. Harper Ave.
Chicago, Ill.

John F. Smith
Catherine A. Smith
9353 S. Laflin
Chicago, Ill.

Kathryn Larson
Earl Larson
2717 W. Kilpatrick
Chicago, Ill.

Frances Smith
3312 N. Keating
Chicago, Ill.

Maurice J. Nathanson
134 N. LaSalle St.
Chicago, Ill.

Mitchell Bernick
3145 W. 63rd St.
Chicago, Ill.

Arthur A. Sullivan
111 W. Washington St.
Chicago, Ill.

55 Please Take Notice that on Monday, September 15, 1953, in a preliminary call of the condemnation calendar, the Honorable Denis J. Normoyle, Judge of the Circuit Court of Cook County, set for pretrial conference on Thursday, October 1, 1953, at 10:00 A.M., all of the parcels included in the Petition to Condemn filed herein; and, if necessary, to set the said parcels for trial on the issue of just compensation on a date certain.

At which time and place you may appear if you so see fit.

/s/ Elsa C. Beck
Elsa C. Beck
/s/ William F. Morrissey
William F. Morrissey
Attorneys for Petitioner
69 W. Washington Street
Chicago 2, Illinois

State Of Illinois)
County Of Cook) SS

Elsie M. Jones, being first duly sworn on oath, deposes and says that she served the foregoing Notice by depositing in the United States Mail Chute at 69 W. Washington Street, Chicago, Illinois, true and correct copies of said Notice in sealed envelopes, first class postage prepaid, addressed to the persons to whom said Notice is directed, on the 22nd day of September, 1953.

/s/ Elsie M. Jones

Subscribed and sworn to before me this 22nd day of September, 1953.

/s/ Georgia E. Rhodes
Notary Public

57 Order entered September 14, 1953, on motion of Attorneys for petitioners ordering pre-trial conferences to ascertain just compensation set for October 1, 1953 without further notice and ordering that hearing on traverse as to certain parcels be set for October 6, 1953.

59 Order entered October 1, 1953, which (omitting caption) is in words and figures as follows:

On motion of William F. Morrissey, attorney for Petitioner, and James A. Harrington, Attorney for Respondent,

It Is Ordered that the trial on the issue of just compensation as to Parcels 1-9, 4-56, 8-125 be, and it is, hereby set for hearing on November 2, 1953, without further notice.

Enter: /s/ Normoyle
Judge

Dated at Chicago, Illinois, 10/1/53

61 Order entered November 2, 1953, on motion of Attorney for Respondent, setting Parcels 1-9 and 4-56 for trial on November 16, 1953.

63 Order entered November 16, 1953 which (omitting caption) is in words and figures as follows:

On Motion for continuance of trial date of Kirkland, Fleming, Green, Martin and Ellis concerning Parcel 11-203; of George Latchford, attorney, concerning Parcels 1-4, 1-10 and 1-14; of Ira J. Schultz, attorney, concerning Parcel 5-80, of Boyle & Friedman, attorneys, concerning Parcel 11-206; of

James Harrington, attorney, concerning Parcels 1-9, 4-56 and 8-125; and of Glick & Neistein, attorneys, concerning Parcel 6-100, 6-101, and 6-109;

It Is Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are hereby set on the dates hereinafter shown:

11-203	December 14, 1953
1-4	November 30, 1953
1-10	November 30, 1953
1-14	November 30, 1953
5-80	November 30, 1953
11-206	November 30, 1953
1-9	December 7, 1953
4-56	December 7, 1953
8-125	December 7, 1953
6-100	November 18, 1953
6-101	November 18, 1953
6-109	November 18, 1953

Enter: /s/ D. J. Normoyle
Judge

Dated at Chicago, Illinois, November 16, 1953

65 Order entered December 7, 1953, which (omitting caption) is in words and figures as follows:

On motion for continuance of trial date by Maurice J. Nathanson concerning Parcel 9-165; by Krohn & Posanski concerning Parcel 4-66; by George Latchford concerning Parcels 1-4, 1-10 and 1-14; by I. Padorr concerning Parcels 1-12, 2-29 and 2-30; by Deming, Jarrett & Mulfinger concerning Parcel 7-121; by Martin McNally concerning Parcel 7-117; by Ira Schultz concerning Parcel 5-80; by Freeman & Freeman concerning

Parcel 11-206; and William F. Morrissey, attorney, appearing for Petitioner;

It Is Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial	Parcel	Set for Trial:
9-164	12/14/53	7-121	12/18/53
4-66	12/9/53	7-117	12/9/53
1-4	12/21/53	5-80	12/22/53
1-10	12/21/53	11-206	12/21/53
1-14	12/21/53	1-9	12/21/53
1-12	12/14/53	4-56	12/21/53
2-29	12/14/53	8-125	12/21/53
2-30	12/14/53	5-73	12/21/53

Enter: /s/ D. J. Normoyle
Judge

Dated at Chicago, Illinois December 7, 1953

67 Order entered December 21, 1953, which (omitting caption) is in words and figures as follows:

On motion of George Latchford concerning Parcels 1-4, 1-10 and 1-14; of Boyle & Friedman concerning Parcel 11-206, of James A. Harrington concerning Parcels 1-9, 4-56, 8-125 and 5-73; and of Kirkland, Fleming, Green, Martin and Ellis concerning Parcels 6-100, 6-101 and 6-109; and William F. Morrissey, attorney, appearing for the Petitioner; and 7-53 by Gerard Serritella;

It Is Ordered that the trials on the issue of just compensation as to the above designated

parcels be, and they are, hereby set for hearing on the dates hereinafter shown, without further notice:

Parcel:	Set for Trial:
1-4	January 25, 1954
1-10	January 25, 1954
1-14	January 25, 1954
11-206	January 25, 1954
1-9	January 18, 1954
4-56	
8-125	
5-73	January 18, 1954
6-100	January 25, 1954
6-101	January 25, 1954
6-109	January 13, 1954

Enter: /s/ D. J. Normoyle
Judge

Dated at Chicago, Illinois December 21, 1953

69 Order entered January 18, 1954, which (omitting caption) is in words and figures as follows:

This matter having come on to be heard as to the issue of just compensation concerning Parcels 1-9, 4-56, 8-125, 5-73 and 5-80; counsel for the Petitioner, William F. Morrissey, having appeared;

It Is Ordered that the trials on the issue of just compensation concerning the aforesaid parcels be, and they are, hereby set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	January 25, 1954
4-56	January 25, 1954
8-125	January 25, 1954
5-73	February 1, 1954
5-80	February 1, 1954

Enter: /s/ D. J. Normoyle
Judge

Dated at Chicago, Illinois January 18, 1954

71 Order entered on January 25, 1954, (omitting caption):

On motion of attorneys for respondents;

It is ordered that the trials on the issue of just compensation as to Parcels 1-9, 4-56, and 8-125, be and they are hereby set for January 26, 1954, without further notice.

It is further ordered that the trials on the issue of just compensation as to Parcels 1-14, 6-100 and 6-101 be, and they are, hereby set for Feb. 10, 1954 without further notice.

Enter: D. J. Normoyle
Judge

January 25, 1954

73 Motion filed January 26, 1954, which (omitting caption and signatures) is in words and figures as follows:

MOTION

Now comes the Petitioner, Chicago Land Clearance Commission, by its attorneys, and moves the court to enter a rule upon all respondents in the above-entitled cause who have not heretofore filed traverses or other pleadings contesting the right of the Commission to maintain this present condemnation suit, that all such respondents file

traverses or other pleadings contesting the right of petitioner to condemn herein, if they desire so to do, within seven days from this date.

Dated at Chicago, Illinois, January 26, 1954.

75 Order entered January 26, 1954 (omitting caption):

On motion of William F. Morrissey, and Wilson & Mc Ilvaine, counsel for Petitioner herein;

It Is Ordered that all respondents herein who desire to contest the right of the Petitioner to maintain this condemnation suit and who have not heretofore done so be, and they are, hereby ruled to file a traverse or other proper pleading contesting such right within seven days from this date; and if such pleading is not filed within this period, respondents will be deemed to have waived the right to file such pleading or to contest the right of Petitioner to proceed to have just compensation determined.

Enter: Normoyle
Judge

Dated at Chicago, Illinois, 1/26/54

77 Order entered January 27, 1954, which (omitting caption) is in words and figures as follows:

On motion of attorneys for petitioner and respondents;

It Is Ordered that the present hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels

4-51, 5-75, 11-206, 7-124, 8-132 and 5-83 be, and shall be, resumed and continued to Thursday, January 28, 1954, at 11:00 A.M., without further notice.

It Is Further Ordered that the trial on the issue of just compensation as to Parcels 1-9, 4-56 and 8-125 be, and it is, hereby continued and set for Thursday, January 28, 1954, without further notice.

Enter: Entered
Judge

Dated at Chicago, Illinois January 27, 1954

79 Order entered January 28, 1954, which (omitting caption) is in words and figures as follows:

On motion of attorneys for the Petitioner and respondents;

It Is Ordered that the present hearing on the traverses and motions to dismiss filed by the attorneys for respondents concerning Parcels 4-51, 5-75, 11-206, 7-124, 8-132 and 5-83 be, and it shall be, resumed and continued to Tuesday, February 2, 1954 at 2:00 P.M. without further notice.

It Is Further Ordered that the trial on the issue of just compensation as to Parcels 1-9, 4-56 and 8-125 be, and it is, hereby continued and set for Tuesday, February 2, 1954 at 2:00 P.M. without further notice.

Enter: /s/ D. J. Normoyle
Judge

Dated at Chicago, Illinois, January 28, 1954.

81 Order of February 2, 1954, which (omitting caption) is in words and figures as follows:

On motion of attorneys for the petitioner and respondents;

It Is Ordered that the present hearing on the traverses and motions to dismiss filed by the attorneys for respondents concerning Parcels 4-51, 5-75, 11-206, 7-124, 8-132 and 5-83 be, and it shall be, resumed and continued to Monday, March 29, 1954, at 10:00 A.M., without further notice.

It Is Further Ordered that the trial on the issue of just compensation as to Parcels 1-9, 4-56 and 8-125 be, and it is, hereby continued and set for Monday, March 29, 1954, at 10:00 A.M., without further notice.

Enter: Judge Normoyle

Judge

Dated at Chicago, Illinois, February 2, 1954.

83 Order of March 29, 1954, continuing cause to March 31, 1954 on motion of respondents.

85 Order of March 31, 1954, continuing cause to May 6, 1954, on motion of attorney for the respondent.

87 Order of May 6, 1954, which (omitting caption) is in words and figures as follows:

On motion of attorneys for petitioner and respondents;

It Is Ordered that the present hearing on the traverses and motions to dismiss filed by the attorneys for respondents concerning parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and shall be, resumed and continued to May 24, 1954, at 2:00 o'clock P.M. without further notice;

It Is Further Ordered that the trials on the issue of just compensation as to Parcels 1-9, 4-56 and 8-125 be, and they are, hereby continued and set for May 24, 1954, without further notice.

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, May 6, 1954.

89 Order of May 24, 1954, continuing cause to May 25, 1954, on motion of attorney for the respondents.

91 Order of May 25, 1954, continuing cause to May 26, 1954, on motion of attorneys for the respondents.

93 Order of May 26, 1954, continuing cause to May 27, 1954, on motion of attorney for the respondents.

95 Order of May 27, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is, hereby continued and set for May 28, 1954, without further notice.

It Is Further Ordered, on motion of attorneys for respondents concerning Parcels 1-9, 4-56 and 8-125, that the trials on the

issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown; without further notice:

Parcel	Set for Trial
1-9	May 28, 1954
4-56	May 28, 1954
8-125	May 28, 1954

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois May 27, 1954

97. Order of May 28, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is hereby continued and set for June 1, 1954, without further notice.

It Is Further Ordered, on motion of attorneys for respondents concerning Parcels 1-9, 4-56 and 8-125, that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	June 1, 1954
4-56	
8-125	

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois May 28, 1954.

99 Order of June 1, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206, be, and it is, hereby continued and set for June 7, 1954, without further notice;

It Is Further Ordered, on motion of attorneys for respondents concerning Parcels 1-9, 4-56 and 8-125, that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	June 7, 1954
4-56	June 7, 1954
8-125	June 7, 1954

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, June 1, 1954

101 Order of June 7, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is, hereby continued and set for June 8, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	June 8, 1954
4-56	June 8, 1954
8-125	June 8, 1954

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, June 7, 1954

103 Order of June 8, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is, hereby continued and set for June 9, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	June 9, 1954
4-56	June 9, 1954
8-125	June 9, 1954

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois June 8, 1954

105 Order of June 9, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is, hereby continued and set for June 10, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels

hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial	
1-9	June 10,	10 AM
4-56	June 10	10 AM
8-125	June 10	10 AM

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois June 9, 1954

107 Order of June 10, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is, hereby continued and set for June 11, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial	
1-9		
4-56	June 11	at 10AM
8-125		

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, June 10, 1954

109 Order of June 11, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and it is, hereby continued and set for June 22, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	June 22, 1954
4-56	
8-125	

Enter: Denis J. Normoyle
Judge

Chicago, June 11, 1954

111 Order of June 22, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss heretofore filed herein by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearings on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and they are, hereby continued and set for June 29, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are hereby continued and set for hearing on the dates hereinafter shown, without further notice:

Parcel	Set for Trial
1-9	June 29, 1954
4-56	June 29, 1954
8-125	June 29, 1954

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, June 22, 1954.

113 Order of June 29, 1954, which (omitting caption) is in words and figures as follow:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132, 11-206; William F. Morrissey, attorney for petitioner, appearing;

It Is Ordered that the hearing on the traverses and motions to dismiss concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and they are, hereby continued and set for September 20, 1954, without further notice.

It Is Further Ordered that the trials on the issue of just compensation as to the parcels hereinafter listed be, and they are, hereby

continued and set for hearing on the dates hereinafter shown:

Parcel	Set for Trial
1-9)	
4-56)	September 20, 1954
8-125)	

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, June 29, 1954.

115 Order of September 20, 1954, which (omitting caption) is in words and figures as follows:

This matter coming on to be heard on the traverses and motions to dismiss filed by attorneys for respondents concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206; William F. Morrissey, attorney for petitioner, appearing; and Sherwood Platt of Mayer, Meyer, Austrain & Platt having requested a continuance;

It Is Ordered that the hearing on the traverses and motions to dismiss concerning Parcels 4-51, 5-75, 7-124, 8-132 and 11-206 be, and they are, hereby continued and set for November 8, 1954, without further notice, at 10:00 A.M.

It Is Further Ordered that the trials on the issue of just compensation as to Parcels 1-9, 4-56 and 8-125 be, and they are, hereby continued and set for hearing on October 25, 1954, without further notice.

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, September 20, 1954

117 Order of October 25, 1954, continuing hearing on Parcels No. 1-9 and 4-56 and another parcel to October 27, 1954 on motion of attorneys for the respondents.

119 Order of October 27, 1954, continuing Parcels No. 1-9 and 4-56 and an additional parcel to November 15, 1954.

121 Order of November 15, 1954, continuing Parcels No. 1-9 and 4-56 and an additional parcel to November 22, 1954.

123 Order of November 22, 1954, continuing Parcels No. 1,9 and 4-56 and one additional parcel to December 15, 1954.

125 Order of December 15, 1954, continuing Parcels No. 1-9 and 4-56 and one additional parcel to December 17, 1955 (sic), and continuing a second additional parcel to January 4, 1955, on motion of attorneys for the respondents.

127 Order of December 17, 1954, continuing Parcels No. 1-9 and 4-56 and one additional parcel to January 24, 1955, on motion of attorneys for the respondents.

129 Order of January 24, 1955, continuing two parcels in controversy to February 14, 1955, one additional parcel to February 14, 1955, and a fourth parcel to January 25, 1955, on motion of attorneys for respondents.

131 Order of February 14, 1955, continuing Parcels No. 1-9 and 4-56 to February 15, 1955, and continuing one additional parcel to April 18, 1955, on motion of attorneys for respondents.

133 Order of February 15, 1955, continuing Parcels No. 1-9 and 4-56 to February 16, 1955, on motion of attorneys for respondents.

135 Order of February 16, 1955, continuing Parcels No. 1-9 and 4-56 to April 11, 1955, on motion of attorneys for respondents.

137 Order of April 11, 1955, continuing five parcels, including Parcels No. 1-9 and 4-56, to April 12, 1955, on motion of attorneys for the respondents.

139 Order of April 12, 1955, continuing five parcels, including Parcels No. 1-9 and 4-56, to April 13, 1955, on motion of attorneys for respondents.

141 Order of April 13, 1955, continuing five parcels, including Parcels No. 1-9 and 4-56 to April 14, 1955, on motion of attorneys for respondents.

143 Order of April 14, 1955, continuing five parcels, including parcels No. 1-9 and 4-56, to April 15, 1955, on motion of the attorneys for the respondents.

145 Order of April 15, 1955, continuing six parcels, including Parcels No. 1-9 and 4-56 to April 18, 1955, on motion of attorneys for the respondents.

147 Order of April 18, 1955, continuing six parcels, including Parcels No. 1-9 and 4-56 to April 19, 1955, on motion of attorneys for the respondents.

149 Order of April 19, 1955, continuing six parcels, including Parcels No. 1-9 and 4-56 to April 20, 1955, on motion of attorneys for respondents.

151 Order of April 20, 1955, continuing six parcels, including Parcels No. 1-9 and 4-56, to April 21, 1955, on motion of attorneys for respondents.

153 Order of April 21, 1955, continuing three parcels, including Parcels No. 1-9 and 4-56 to April 22, 1955.

155 Order of April 22, 1955, which (omitting caption) is in words and figures as follows:

This Matter having come on to be heard on the motion of Joseph O. Kostner, attorney, for leave to substitute for James A. Harrington as attorney for Florence D. Kostner; and also for leave to file the appearance of Boyle & Friedman, attorneys, as co-counsel; and also for leave to file a traverse within five days; and William F. Morrissey, attorney for petitioner, having appeared and having objected to the motion for leave to file a traverse; and

It Appearing From The Records filed in this case that the Petition to Condemn was filed on April 2, 1953, that James A. Harrington of Arvey, Hodes and Mantynband, attorneys, filed an appearance for Florence D. Kostner in June, 1953; and it further appearing from the records that on January 26, 1954, a rule was entered upon all respondents in the above-entitled cause to answer or otherwise plead to the Petition to Condemn within seven days thereof; and the respondent, Florence D. Kostner, having failed or refused to file any pleading within the said time; and

It Appearing From The Records that more than twenty-five continuances in the trial on the issue of just compensation have been granted to the respondent herein;

Now, Therefore, It Is Ordered that the motion for leave to file a traverse by Florence D. Kostner is overruled and denied;

It Is Further Ordered that leave be, and it is, hereby given to Joseph O. Kostner, attorney, to substitute his appearance for James A. Harrington as attorney for Florence D. Kostner;

This Order is entered nunc pro tunc as of the 14th day of February, 1955.

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois, April 22, 1955

157 Withdrawal, consent to withdrawal and appearance of new attorney for Florence Kostner as to Parcels No. 1-9 and 4-56, which (omitting caption) is in words and figures as follows:

WITHDRAWAL OF ATTORNEYS

We hereby withdraw our appearance as attorneys for the defendant, Florence D. Kostner (Parcels 1-9 and 4-56) in the above entitled cause.

Arvey Hodes & Mantynband and
James A. Harrington

CONSENT TO WITHDRAWAL AND SUBSTITUTION OF ATTORNEYS

I hereby consent to the withdrawal of Arvey Hodes & Mantynband and James A. Harrington

as my attorneys in the above entitled cause (Parcels 1-9 and 4-56) and to the substitution thereof of Joseph O. Kostner, as my attorney.

Florence D. Kostner

APPEARANCE

I hereby enter my appearance as attorney for Florence D. Kostner, in lieu of Arvey, Hodes & Mantynband and James A. Harrington.

Joseph O. Kostner
Joseph O. Kostner
83 East Elm Street
Chicago 11, Illinois

159 Order of April 22, 1955, which (omitting caption) is in words and figures as follows:

On matter of William F. Morrissey, attorney for petitioner and John S. Boyle, attorney for respondent concerning Parcel 11-206;

It is ordered that the trial on the issue of just compensation as to Parcel 11-206 be, and it is, hereby continued and set for Monday, April 25, 1955 at 10:00 A.M. at the head of the trial call.

It is further noted by the Court that Parcels 1-9 and 4-56 represented by Joseph O. Kostner, an attorney, have been continuously on the trial call on each court day from April 11, 1955 to the date hereof and the said attorney has failed to appear and answer. Pursuant to the Court's direction William F. Morrissey, attorney informs the Court that he called Joseph O. Kostner yesterday, April

21st, to be present this date and that Mr. Kostner said he would appear. It is now 10:30 o'clock A.M. and Mr. Kostner has failed to appear and answer.

It is therefore Ordered that the trial on the issue of just compensation as to Parcels 1-9 and 4-56 be, and it is, again continued and set for Monday, April 25, 1955 at 10:00 A.M.

Enter: D. J. Normoyle

April 22, 1955.

161 Notice filed April 25, 1955, which (omitting caption) is in words and figures as follows:

NOTICE

To: Joseph O. Kostner Florence D. Kostner
83 East Elm Street 83 East Elm Street
Chicago, Illinois Chicago, Illinois

Please Take Notice that on Monday, the 25th day of April, A.D., 1955, at 10:00 A.M., or as soon thereafter as I may be heard, I shall appear before his honor, Judge Denis J. Normoyle, in Room 739 of the County Building, and, pursuant to the Court's order, the petitioner shall proceed to trial on the issue of just compensation as to the above-designated parcels in the above-entitled causes of action.

At which time and place you may appear if you see fit.

/s/ Wm. F. Morrissey
Attorney for Petitioner
69 W. Washington St.
ANdover 3-0888

164 Order of April 25, 1955, continuing Parcels 1-9 and 4-56 to April 26, 1955, on motion of attorneys for respondents.

166 Order of April 26, 1955, continuing Parcels 1-9 and 4-56 to April 27, 1955, on motion of attorneys for respondents.

168 Petition for change of venue filed April 28, 1955, on behalf of the owner of Parcels 1-9 and 4-56 on the ground of belief that she will not receive a fair trial because the trial court is prejudiced against her and that she was first apprised of said prejudice within the preceding five days.

171 Order of April 28, 1955, allowing change of venue which (omitting caption) is in words and figures as follows:

This matter comes on to be heard on the sworn petition for change of venue of Florence D. Kostner by Joseph O. Kostner, her attorney, concerning Parcels 1-9 and 4-56; and William F. Morrissey appeared for the Chicago Land Clearance Commission;

Petitioner in this proceeding objects to the petition for change of venue on the grounds that it is not made in good faith and is for the purpose of delay; and as further basis for objection petitioner states as follows:

The records in the above-entitled cause of action show that the petition to condemn was filed on April 2, 1953, and that James A. Harrington of Arvey, Hodes and Mantynband, attorneys, filed an appearance for Florence D. Kostner in June, 1953, and that from that date until February 14, 1955, there were twenty-five or more motions for continuance in the trial on the issue of just compensation in behalf of the respondent; and that as of February 14, 1955,

Joseph O. Kostner, by order of this court, was given leave to substitute for James A. Harrington as attorney for Florence D. Kostner; and

The records in the above-entitled cause of action further show that the subject parcels 1-9 and 4-56 have been continuously on the trial call in this court from day to day from Monday, April 11, 1955, to the date hereof; and

The said objections to the petition for change of venue have been duly noted;

Now, Therefore, It Is Ordered that the petition for change of venue of Florence D. Kostner concerning Parcels 1-9 and 4-56 be, and it is, hereby granted and allowed.

It Is Further Ordered that Parcels 1-9 and 4-56 only in the above-entitled cause of action be, and they are, hereby transferred and assigned to the Chief Justice of the Circuit Court for reassignment.

Enter: Denis J. Normoyle
Judge

Dated at Chicago, Illinois April 28, 1955.

173 Order of May 4, 1955, which (omitting caption) is in words and figures as follows:

This matter having come on the petitioner's motion to set the said parcels 1-9 and 4-56 for trial on the issue of just compensation, and William F. Morrissey, appearing for the petitioner, and Joseph O. Kostner and James Brown appearing for the respondent and the court being fully advised in the premises;

It Is Ordered that the trial on the issue of just compensation as to parcels 1-9 and 4-56 be and it is, hereby set for Monday, May 23rd, 1955 at 10:00 A.M. without further notice.

Carrier
Judge

Entered May 4, 1955

175 Substitution of attorneys filed May 23, 1955.

SUBSTITUTION OF ATTORNEY

I hereby withdraw my appearance as attorney for the defendant, Florence D. Kostner.

Joseph O. Kostner

We hereby enter our appearance as attorneys for the defendant, Florence D. Kostner.

Wisch & Crane

I hereby agree to the withdrawal of Joseph O. Kostner, as my attorney, and to the entry of the appearance of Wisch and Crane as my attorneys.

Florence D. Kostner

177 Order of consolidation entered May 23, 1955, which (omitting caption) is in words and figures as follows:

On stipulation in open court by and between Joseph O. Kostner, attorney for Florence D. Kostner, respondent, and William F. Morrissey, attorney for petitioner, for leave to consolidate for trial on the issue of just compensation Parcel 1-13 in the matter of Chicago Land Clearance Commission, a municipal corporation, v. LaSalle National Bank, et al., Circuit Court Case No. 53 C 9428, with Parcels 1-9 and 4-56 in the above-entitled cause

of action; the said Florence D. Kostner being the owner of record of the aforesaid three parcels and Joseph O. Kostner being the attorney of record for the said Florence D. Kostner in both cases; and Wisch and Crane being substituted as attorneys for Joseph O. Kostner;

The Court being fully advised in the premises;

Now, Therefore, It Is Ordered that Parcel 1-13 in the matter of Chicago Land Clearance Commission, a municipal corporation, v. LaSalle National Bank, et al., Circuit Court Case No. 53 C 9428, be, and it is, for the purpose of trial on the issue of just compensation, consolidated with Parcels 1-9 and 4-56 in the above-entitled cause of action;

It Is Further Ordered, and by agreement of counsel, that Parcels 1-9, 4-56 and 1-13 shall be, and they are, hereby consolidated in the above-entitled proceedings, i.e., Chicago Land Clearance Commission, a municipal corporation, v. Irma G. Rosenau, et al., Circuit Court Case No. 53 C 5659;

It Is Further Ordered, and by agreement of counsel, that on the trial on the issue of just compensation as to Parcels 1-9, 4-56 and 1-13, one verdict shall be returned by the jury and the judgment order entered pursuant to the verdict under the title and heading, Chicago Land Clearance Commission v. Irma G. Rosenau, et al., Circuit Court Case No. 53 C 5659.

Enter: /s/ Lee W. Carrier
Judge

Dated May 23, 1955, Chicago, Illinois.

179 Order of May 31, 1955, which (omitting caption) is in words and figures as follows:

It Is Ordered that the trial on the issue of just compensation as to parcels 1-9, 4-56, and 1-13 be and it is, hereby continued and set for Monday, June 13th, 1955 at 10:00 A.M. at the head of the trial call, without further notice.

/s/ Carrier
Judge

Entered May 31st, 1955

181 Order of June 13, 1955, which (omitting caption) is in words and figures as follows:

On motion of Wisch and Crane, attorneys for the respondent, Florence D. Kostner, for leave to withdraw nunc pro tunc as of May 23, 1955, the substitution of attorneys heretofore filed on that day, whereby Wisch and Crane were substituted as attorneys for said respondent in lieu of Joseph O. Kostner, and due notice having been given to all parties and the Court being fully advised in the premises,

It Is Hereby Ordered that the substitution of attorneys heretofore filed in this cause on May 23, 1955, whereby Wisch and Crane were substituted as attorneys for the respondent, Florence D. Kostner, in lieu of respondent's former attorney, Joseph O. Kostner, be and the same is hereby withdrawn.

It Is Further Ordered that the appearance of Joseph O. Kostner as attorney for said respondent heretofore filed in this cause stand as the appearance for said respondent.

Enter: Carrier
Judge

May 31, 1955

183 Petition filed June 13, 1955, which (omitting caption) is in words and figures as follows:

Petition For Permission To File Traverse

Now Comes Florence D. Kostner, defendant in the above entitled cause, and moves the court for leave to file instanter a Traverse to the above entitled petition to condemn. She represents and she is the owner of the property described as parcels 1-9 and 4-56 in Case No. 53 C 5659 and Parcels 1-13 in Case No. 53 C 9428.

She further represents that due to her hospitalization in the winter and spring of 1954 and convalescense during the summer that she was unable to see. That she further believed that her rights to dispute the taking were being protected by her attorney. That no Traverse was filed as she desired. That on February 16, 1955, after she had been appraised of the fact that no Traverse was filed, she believed that a written request to file a Traverse and appearance of new counsel would be made. That this was not done and no appearance was entered. That she was endeavoring to secure experienced counsel until 25 May and was unsuccessful due to the ac-
184 ceptance and refusal of various attorneys.

Wherefore, Florence D. Kostner prays that she be granted an opportunity to file the Traverse heretofore filed herein.

/s/ Florence D. Kostner
Florence D. Kostner

State Of Illinois)
County Of Cook) SS

Florence D. Kostner, being first duly sworn on oath, deposes and says that she has read the above petition for permission to file a Traverse; that she knows the contents thereof and states that the matters and things therein alleged are true in substance and in fact.

Florence D. Kostner

Subscribed and Sworn to before me the 31st day of May, 1955.

Raymond Krawitz
Notary Public

185 Traverse filed June 13, 1955, which (omiting caption) is in words and figures as follows:

TRAVERSE

Now Comes the defendant, Florence D. Kostner, being the legal owner in fee simple of the parcels described in the above caption, by Joseph O. Kostner, her attorney, and traverses and denies the allegations in the petition to condemn filed herein and particularly traverses and denies:

1. That the petitioner is authorized to condemn the property or property rights owned by this defendant;

2. That all of the facts, situations and circumstances which are required to exist in order for the petitioner to have the right to condemn said premises do in fact exist;

3. That the petitioner has fully complied with all of the conditions and procedure required by the laws of this state to entitle the petitioner to the right to condemn;

4. That the "Blighted Areas Redevelop-
186 ment Act of 1947" authorizes the acquisition of the property owned by this defendant by condemnation;

5. That the "Blighted Areas Redevelopment Act of 1947" applies to the property owned by this defendant;

6. That the "Blighted Areas Redevelopment Act of 1947" is a constitutional enactment if the same be applied to the property owned by this defendant;

7. That the property owned by this defendant and referred to in this proceeding as Parcel 1-13 constitutes a slum or blighted area within the meaning of those words as defined in said Act;

8. That the classification of said Parcel 1-13 as a slum or blighted area or as a portion of a slum or blighted area, is a proper classification and states that such classification is arbitrary, unsound and capricious;

9. That the determination of the petitioner that the property of this defendant was a slum and blighted area and included as a part of "Slum and Blighted Area Redevelopment Project No. 3" was a proper, fair, just or legal determination;

10. That the action of the City Council of Chicago in adopting a resolution approving the petitioner's determination was a proper, fair, just or legal determination.

11. That the action of the State Housing Board in adopting a resolution approving petitioner's determination was a proper, fair, just or legal determination;

12. That the property of this defendant is being acquired for a proper public purpose;

13. That said Parcel 1-13 is being acquired for predominately residential use;

187 14. That an eligible purchaser has been obtained or presented a plan for the development or redevelopment of said property for predominately residential use;

15. That any such plan by an eligible purchaser has been approved by the petitioner, the State Housing Board and the governing body of the municipality in which such property is situated or that the same conforms in all respects to the zoning and building ordinances of the City of Chicago;

16. That any use whatsoever by improvement or otherwise is intended to be made on said Parcel 1-13;

17. That necessary consents have been obtained from the necessary public and municipal authorities in connection with said property or any plans of development or redevelopment thereof;

18. That the petitioner has procured proper or sufficient assurances or undertakings as required by said Act;

19. That said property is improved or that removal of any building is required or that construction of any building thereon is contemplated;

20. That the petitioner has made arrangements for the construction of any improvements whatsoever on said Parcel 1-13;

21. That the petitioner has any bonafide expectation or intention of erecting or completing improvements on the property of this defendant within any reasonable period hereafter;

22. That the purpose of the petitioner in seeking a condemnation of said Parcel 1-13 in accordance with the intentions and purposes of the acts and statutes under which the petitioner purports to be proceeding;

23. That the property of this defendant is necessary or required for the purposes stated by the petitioner;

188 24. That any proper or legal determination was ever made by the petitioner and other necessary authorities that the property of this defendant was in a slum or blighted area;

25. That the definition of a slum or blighted area contained in said Act applies to the property of this defendant or is a proper definition under the Constitution;

26. That the petition filed herein or these proceedings comply with the Fifth Amendment, the Fourteenth Amendment or Section 10 of Article I of the Constitution of the United States;

27. That the petition filed herein or these proceedings comply with Section 2, Section 13 and Section 19 of Article II and Section 22 of Article IV of the Constitution of Illinois;

28. That the purposes and objects of the "Blighted Areas Development Act of 1947" will be achieved or aided by the condemnation or acquisition of said Parcel 1-13;

29. That the petitioner is authorized by the statutes of this state to condemn said parcel.

Wherefore this defendant moves that the petition to condemn be dismissed as to said Parcel 1-13 at petitioner's cost.

Florence D. Kostner

By _____
Her Attorney

Joseph O. Kostner
83 East Elm Street
Chicago 11, Illinois
Telephone MIchigan 2-9713

190 Appearance of Mortimer, Nolan, O'Malley & Dunne, associate counsel for the respondent filed June 13, 1955.

192 Order of June 29, 1955, setting aside the jury verdict on the Court's own motion granting a new trial and directing that the new trial be had on September 12, 1955.

194 Order of November 1, 1955, which (omitting caption) is in words and figures as follows:

This matter coming on for further proceedings after the trial by jury hereof had been recessed on October 26, 1955 by the Honorable Lee W. Carrier until this date and the jury being present as were the attorneys for both parties and the Court having been informed that the Honorable Lee W. Carrier who had become ill on October 26, 1955 would be unable to continue with these proceedings, the Court on its own motion;

Does Order: That Chester Hornacki, one of the jurors previously sworn to try the issues herein is withdrawn and a mistrial declared.

It Is Further Ordered that this cause be transferred to the Executive Committee of the Circuit Court of Cook County for re-assignment and a new trial.

This order is entered nunc pro tunc as of October 31, 1955.

Enter: /s/ Wm. J. Wimbiscus
Judge

Dated: November 1, 1955.

196 Motion filed February 3, 1956, and affidavit in support thereof, which (omitting caption) are in words and figures as follows:

MOTION

Now comes Florence D. Kostner, defendant herein, and owner of parcels 1-9, 1-13 and 4-56, and moves that the order entered herein on June 13, 1955, denying leave to file a traverse be reconsidered and that the traverse submitted with the petition filed that day be set down for hearing at an early date and in support of said motion attaches the affidavit of Robert J. Nolan, one of her attorneys.

Florence D. Kostner,

By: _____
Mortimer, Nolan, O'Malley & Dunne

197 AFFIDAVIT

Robert J. Nolan, being first duly sworn states that he is one of the attorneys for the respondent herein and charged with the duty

of presenting the respondent's case to the court.

He has examined the traverse submitted with the petition of June 13, 1955 and in his opinion said traverse presents issues of fact and law which question the jurisdiction of the court to proceed on the petition filed by the petitioner herein.

That unless trial is had on these questions prior to the trial of just compensation, he will be unable to properly present the issues raised by the traverse to a court of appeal and an opportunity on appeal will be restricted to presenting the question of whether the trial court should have considered the traverse. Under those circumstances and if appeal is had the affect of the court's ruling in denying trial on the merits of the traverse will constitute a delay in the ultimate conclusion of the case which is not in the interest of any of the parties hereto, nor in the interest of substantial justice.

If, however, the court should set the traverse down for trial, (regardless of the court's ruling,) the question of the merits of the traverse will be preserved for action by a court of appeal.

198 Affiant further states that in his opinion the traverse is not interposed for delay and will not hinder orderly completion of this case in the trial court.

/s/ Robert J. Nolan

Subscribed and sworn to before me this 22nd day of February, A.D. 1956.

/s/ Margaret E. Tronstad
Notary Public

200 Order of February 6, 1956, continuing the motion for leave to file a traverse to February 9, 1956, and continuing the trial as to just compensation to February 14, 1956.

202 Judgment order entered February 18, 1956, ascertaining just compensation for parcels 1-9, 1-13 and 4-56 and further ordering that upon payment of the amount shown therein the petitioner is entitled to enter upon and take possession of the real property.

208 Post trial motion filed March 16, 1956, which (omitting caption) is in words and figures as follows:

POST TRIAL MOTION

Now comes Florence Kostner, respondent herein, by Mortimer, Nolan, O'Malley & Dunne, her attorneys, and moves that the judgment entered herein be vacated, the jury verdict set aside, and a new trial granted and in support of said motion asserts the following:

1. The court erred in not permitting the respondent to file a traverse and in not permitting trial upon said traverse so that the respondent has been deprived of an opportunity to contest the right of the petitioner to take her property.

2. The court erred in permitting the jury to consider evidence of other property which was not comparable to the property being condemned.

3. The court erred in giving certain instructions to the jury requested by the petitioner and in refusing to give certain in-

structions requested by the respondent.

Florence Kostner,

By: /s/ Mortimer, Nolan, O'Malley & Dunne

Robert J. Nolan hereby certifies that he is one of the attorneys for the respondent herein and that in his opinion the foregoing motion is well founded in law and not interposed for delay.

/s/ Robert J. Nolan

210 Order of April 4, 1956, overruling post trial motion.

212 Notice of appeal filed May 29, 1956, which (omitting caption) is in words and figures as follows:

NOTICE OF APPEAL

Respondent Florence Kostner, hereby appeals to the Supreme Court of the State of Illinois, from the judgment entered in this case on February 18, 1956, which judgment found that just compensation to the parties interested in Parcel 1-9 was $3,500.00, in Parcel 1-13 was $12,000.00 and in Parcel 4-56 was $4,500.00, and ordered and adjudged that upon payment of these amounts the Chicago Land Clearance Commission should thereby be vested with the Fee Simple title to said parcels of real estate and empowered to enter upon and take possession of same and retained jurisdiction as to other parcels in said case; and also appeals from the orders of the Court entered on April 22, 1955 (Nunc pro tunc as of February 14, 1955), June 13, 1955, October 24, 1955 and February 9, 1956, denying Respondent-Appellant

leave to traverse the petitioner's right to condemn the real estate involved and also appeals from the order of April 6, 1956, overruling the Post Trial motion of Respondent.

Appellant seeks to have each and all of said judgments and orders reversed and a new trial ordered and to have the Supreme Court direct that the Trial Court permit Respondent-Appellant to file a traverse to the petition to condemn and pass upon the questions raised by said traverse prior to proceeding to any trial on the issue of just compensation.

Mortimer, Nolan, O'Malley & Dunne,

By: _____

Attorneys for Florence Kostner

214 Proof of service of notice of appeal.

216 Praecipe for record filed June 7, 1956.

217 Proof of Service of praecipe for record.

219 Praecipe for additional record and service thereof filed June 12, 1956.

226-229 Report of proceedings of October 31, 1955, which was certified and ordered filed on June 26, 1956, and is as follows:

227 The Court: I think we should perhaps tell the jury. Bring the jury out, Mr. Bailiff. They can just stand right here.

Ladies and gentlemen, as you perhaps know, Judge Carrier became ill, and he will not return, and it is therefore necessary for 228 the Court to declare a mistrial of this matter that you have been hearing, and withdraw a juror, and send this case back to the Chief

Justice for assignment. You will be excused from further duty in this courtroom. I have got your cards here. We'll just withdraw one juror. I will take the first one we come to, Chester Hainacki. It is a matter of a formality. We withdraw you as a juror, declare a mistrial. I will sign these, you can be on your way.

Counsel were directed to prepare a draft order in accordance with this announcement.

230-246 Report of proceedings before the Honorable Ezra Clark, on the 14th day of February, 1956, at a hearing had immediately prior to the trial of the case on the issue of just compensation which were certified and ordered filed on June 26, 1956.

231 Mr. Nolan: If the Court please, this is a motion asking that prior to the commencement of any trial for determination of just compensation, the Court consider whether or not it should not grant leave to respondent at this time to file a traverse contesting the right of the Chicago Land Clearance Commission to condemn this piece of property.

The basis for our motion is that unless this traverse is filed we'll be put in the position of being required to appeal, if an appeal is necessary, on the sole question of whether or not the traverse was presented in ample time to be considered by the Court. Whereas, if the Court should take time, permit us to file the traverse and set it down for a hearing instanter, or within a short time, we would then be able to present factual evidence

to the Court to back up the averments in our traverse concerning the right of the Chicago Land Clearance Commission to take the subject property.

232 Off the record.

(Discussion off the record.)

Mr. Nolan: That's sufficient from me.

Mr. Morrissey: Now, if the Court please, the Petitioner objects to the motion for leave to file a traverse at this time for the following reasons:

The suit was filed, the petition to condemn was filed on April 2, 1953 and the appearance of this respondent, Mrs. Kostner, was filed by Attorney James Harrington in June of 1953.

In September of 1953, this case, which includes the parcels owned by Mrs. Kostner and represented at that time by Mr. Harrington were on Judge Normoyle's trial calendar and were set for trial; that is the parcels in this case including all of the parcels in that case, were set for trial on the issue of compensation on about four or five days in the balance of the year, 1953.

In January of 1954, the Petitioner moved for the entry before Judge Normoyle for the entry of an order upon all Respondents who
233 had then filed appearances in the case, asking that they be required, if they so desired to file a traverse or other proper pleadings contesting the Petitioner's right to condemn within seven days; and that if they did not file within the said period that they would have been, will have been determined to have

waived their right to file such pleading or to contest the right of the Petitioner to proceed to have just compensation determined. That order was entered by Judge Normoyle on January 26, 1954 and James Harrington was the Attorney of record for the Respondent here, Mrs. Kostner.

After that order had been entered the parcels owned by Mr. Kostner were set down for trial on the issue of just compensation and continued at the request of James Harrington, Attorney for Mrs. Kostner, about 25 times or more during the year 1954.

234 After the order was entered requiring all Respondents to plead within a certain time if they were going to contest the Petitioner's right to condemn, Attorney James Harrington appeared before the Court on numerous dates and stated that he did not intend to file a written traverse so long as there were traverses pending before the Court in which the Court was going to hear the traverses filed by other attorneys and that he wished to abide and would abide by the rulings of the traverses pending before the Court; and he made other representations to the Court. I would not want to depend upon my memory only as to what the other representations were, but in a transcript of February 11, 1955 before Judge Normoyle, Judge Normoyle refers to the fact that Mr. Harrington had appeared before him a number of times and that he did not participate, but he had told the Court that he would abide by the rule of the traverse and not

participate, and the Court--I got from the Court's statement to that effect as of February 11, 1955 when he was speaking to Mr. Lewis Freedman, who was then appearing in
235 behalf of Mrs. Kostner, in February 1955, and Judge Normoyle states:

"My objection is that Mr. Harrington was in here a number of times. We had a traverse on hearing there that took them almost a year. He cannot participate, he said. He would abide by the result of that traverse and not participate.

"That traverse, I said that traverse--I mean a number of them, they have been overruled.

So that Mr. Harrington never filed a traverse and during the year 1954 Judge Normoyle heard the traverses that had been filed in that case and in June of 1955 an order was entered by Judge Normoyle dismissing and overruling the traverses filed in the same case by other attorneys.

Mr. Nolan: Have they been appealed?

Mr. Morrissey: No. All of the persons that had been involved in the hearings before Judge Normoyle in 1954, namely: a parcel
236 represented by Mr. John Boyle; a parcel represented by Mr. Sherwood Platt of Mayer, Friedlich, Spiess, Tierney, Brown and Platt; and a parcel represented by Mr. Jacob Shamberg, who was handling the matter for some other attorney. All of the parcels involved in those traverses with Judge Normoyle here were conceded on the trial on the issue of

just compensation subsequently, but unfortunately no appeal was taken from the judgment.

After the order had been entered by Judge Normoyle overruling the traverses, then, before him these parcels were then set down for trial on the issue of just compensation. At that point Mr. James Harrington in January of 1955, or, February of '55 withdrew as attorney for Mrs. Kostner, and on or about February 11, 1955, Mr. Freedman, of Boyle and Freedman, appeared before Judge Normoyle and asked leave to file the appearance of Joseph Kostner as Attorney for Mrs. Kostner and with Boyle and Freedman as associate counsel; and also leave to file a traverse. The transcript bears out that Judge
237 Normoyle stated that leave would be granted to file an appearance, but that the motion for leave to file a traverse would be denied.

In April of 1955, the order was entered nunc pro tunc as of February 11, 1955.

On April 22, 1955 the order was entered nunc pro tunc as of that time.

238 Now, going back to the February date, February, 1955, subsequent to that time and again in February of 1955, and in April of 1955, these parcels were set for trial on the issue of just compensation at that time. Finally in April, on or about April 25, April 22 I should say, when they were set down for trial on the issue of just compensation, Mr. Boyle and Freedman came into Court together with Mr. Kostner and stated that they were not going

to appear with Mr. Kostner as Attorney for Mrs. Kostner and from the order of April 22, 1955, which was entered nunc pro tunc as of February 1955, their name was stricken out; that is, the reference in the order that leave is hereby given to Boyle and Freedman, to appear as co-counsel with Joseph Kostner, as Attorney for Mrs. Kostner was stricken out for the reason that Boyle and Freedman made the representation to the Court that Mr. Kostner's appearance as attorney for Mrs. Kostner was of record, but Boyle and Freedman, actually, had never had to file the appearance and therefore they would like
239 their names to be dropped from the order; and they stated that they no longer represented Mrs. Kostner, and, therefore, they were not proceeding to represent her on the trial on the issue of just compensation.

Mr. Kostner was told, Mr. Joseph Kostner was told by Judge Normoyle at that time to either get ready to try the case or get another attorney if he wasn't going to try it himself.

Within the next day or two following the April 21st date, April 22nd date, Mr. Joseph Kostner then filed a petition for change of venue from Judge Normoyle. The first petition which he filed was withdrawn and a subsequent petition was filed which was allowed over the objection of the Petitioner, and the order, an order was entered on the petition for change of venue by Judge Normoyle dated April 28, 1955. In other words, the Petitioner objected to the petition for change of venue coming at that time.

The parcels were then assigned to the Chief Justice for reassignment and sent to Judge Carrier for trial on the issue of just compen-
240 sation. They were set for trial, the parcels were set for trial by Judge Carrier and when the parcels were, on the date that they were set for trial Wisch and Crane came into the picture and asked leave to file their appearance for and on behalf of Joseph Kostner and asked for further time to get ready for trial. Over the objection of the Petitioner, Judge Carrier then allowed Wisch and Crane to file an appearance for Joseph Kostner and the matter was set for trial before Judge Carrier within the short time of that date.

241 Mr. Nolan: When the matter came on for trial on June 13, 1955, Wisch and Crane asked leave to have their appearance quashed. That was denied, but they were permitted to withdraw as counsel for Mrs. Kostner.

Mr. Morrissey: Yes.

Mr. Nolan: Whereupon, Mr. Joseph Kostner, being the sole remaining counsel, sought leave to file a motion to dismiss the complaint and the traverse; and the motion to dismiss was argued and denied. The leave to file the traverse was denied.

Morrissey: Right.

242 The case was subsequently heard on the issue of just compensation. The jury returned a verdict, but on the Court's own motion, the verdict was set aside, and the trial continued to another date.

In October, the trial on the issue of just compensation came up again before Judge Carrier. Mr. Nolan at that time renewed his motion for leave to file traverse before Judge Carrier, which was denied and the parties proceeded to a trial on the issue of just compensation, but during the course of the trial, Judge Carrier became ill and the trial was recessed and Judge Carrier did not return and a mistrial declared.

That brings the case down to where it has been assigned to your Honor Judge Clark, sometime previous to--

Mr. Nolan: Let me add just two more things. Are you finished?

Mr. Morrissey: I think so.

Mr. Nolan: At no time since June 13, 1955 has the Respondent requested a continuance for trial of the issue of just compensation. At
243 all times the Respondent has asked the Court, however, to consider the traverse and the factual issues raised by that traverse prior to the commencement of the issue of trial on the issue of just compensation. This motion, first presented by Mr. Joseph Kostner on June 13, 1955, prior to the first trial, was renewed in October, prior to the second trial; and when the matter was set for, for trial on February 6, 1955, the Respondent filed a motion on February 3, 1955 renewing the motion for leave to file traverse.

That motion was continued at the request of the Petitioner to February 9, 1956 and at the direction of the Court to February 11, 1956.

Let me say further that some of the property involved in the overall land clearance project was not made the basis of a petition to condemn until October 1955 when the Chicago Land Clearance Commission first filed a petition to condemn property of the Chicago Burlington and Quincy Railroad, adjacent to
244 the property owned by Mrs. Kostner. So all the delay prior to that time has not delayed the public improvements in any way.

Mr. Morrissey: Well, that's your conclusion. There's nothing to sustain that statement at all. That's merely your conclusion.

Mr. Nolan: I ask the Court to take judicial notice of the date of the filing of the cases of the Chicago Land Clearance Commission--

Mr. Morrissey: Well, we don't begin by condemnation of the properties.

The Court: I don't think it makes one bit of difference. The question involved here is subsequent filing. The very simple question presented to this Court as to whether at this time in view of all that has transpired in the past, in the intervening time between the filing of the petition and the present date, whether at this time the Court could permit the filing of the traverse without regard to when, under the law, a traverse must be filed; and after listening to arguments of counsel, the Court does not see, has not had it pointed out to
245 him; any particular, definite, specific law in regards to this matter.

I'm certainly inclined to think that in view of all the circumstances, the order entered by

Judge Normoyle referring to the filing of any traverse that the Respondent desired to file within a time fixed by the Court in that order, is certainly a valid order. It's certainly within his jurisdiction.

That order was not complied with. Subsequent to that time the same motion was presented to Judge Carrier. The motion was denied.

So, as far as I'm concerned, I'm not at this date and in view of the circumstances going to allow the motion. The motion will be denied, and we'll proceed to trial upon the issue of just compensation.

248-259 Report of Proceedings had at a hearing on the renewal of the motion for leave to file a traverse had before the Honorable Lee W. Carrier, on October 24, 1955, which hearing was had immediately prior to the trial of the case on the issue of just compensation and which report was certified and ordered filed on June 30, 1956, and is as follows:

249 Mr. Nolan: This case has previously been submitted to a jury and a new trial granted by reason of confusion in the verdict.

250 Prior to the submission of this case to the jury, a motion for leave to file a traverse and a motion to dismiss were submitted to your Honor. Now so that no action of mine should be construed as waiving the right to appeal from your Honor's ruling on the petition for leave to file a traverse, or the motion to dismiss, I wish to renew both of those motions at this time.

251 The Court has previously ruled the traverse would not be considered.

The Court: Isn't this the case that was heard before Judge Normoyle?

252 You asked to have it reconsidered by me?

Mr. Nolan: In April, 1955, an order was entered nunc pro tunc, as of February, denying leave to file a traverse, because too much time had gone by. On June 13, 1955, new Counsel came in, Mr. Joseph Kostner asked leave to file a traverse, and submitted it with
253 his application for leave to file a traverse. An affidavit of his mother -- she had been blind during the period that these preceding court appearances had gone on. She had suffered a --

Mr. Kostner: -- detached retina that left her blind for some period.

Mr. Nolan: On recovering her sight and getting back into the case, she began to press her Counsel. They withdrew from the case. Mr. Joseph Kostner, her son, then filed this traverse. Your Honor, I think, entertained a belief that Judge Normoyle had ruled on the point, and ruled that he would not permit this traverse to be filed.

Mr. Morrissey: There were several substitutions of attorneys. The matter was continued time and time again. As a matter of fact, I don't think Joseph Kostner was ever an attorney for the respondent together with other Counsel who successively were associated, of record in the case. There was a ruling, a hearing before Judge Normoyle in this case.

254 Anyway, at the time James Harrington of Arvey, Hodes and Mantynband, was Counsel for Mrs. Kostner, there was a hearing in those cases in which he had agreed before the Court -- this is James Harrington -- in behalf of Mrs. Kostner, that he would abide by the ruling of those hearings, and he never filed a traverse, although given an opportunity, but he made an open statement in court that he would abide by the ruling at the hearing that was then before the Court in these other cases.

The Court: That is other pieces of property in the same--

Mr. Morrissey: Represented by other counsel.

The Court: But in the same project?

255 The Court: Is there anything in the record that shows this situation which Mr. Morrissey has spoken of, that counsel for -- the then Counsel for the respondent here agreed to stand by and be bound by the rulings?

Mr. Nolan: I don't know. Have you a written stipulation to that effect, or do you have the proceedings?

Mr. Morrissey: No, I don't have them. There was no occasion to have them written up at the time.

257 Mr. Kostner: I was not admitted to the bar until late January, 1955, January 20 something.

The Court: Well, gentlemen, my inclination and thought is this: I remember that morning. There was a good deal of discussion. Finally I did grant a continuance. The

Counsel that were here at that time are no longer in the case, are they? Wasn't there a Mr. Brown?

Mr. Morrissey: Brown and Wisch. They took the place of either Boyle and Friedman or someone intervening between Boyle and Friedman and Brown and Wisch.

Mr. Kostner: Boyle and Friedman were never attorneys of record.

Mr. Morrissey: Whether they were attorneys of record or not, their name appears throughout the file, that I know.

Mr. Kostner: I think Wisch and Crane were the substitutes for me.

The Court: I think the Court will have to
258 be consistent. I will rule as I did before. I will deny the petition to file a traverse.

We will proceed with the jury.

260-280 Report of Proceedings before the Honorable Lee W. Carrier on Monday, June 13, 1955, which hearing was had immediately prior to the trial of the cause on the issue of just compensation, which proceedings were certified and ordered filed June 30, 1956.

261 Mr. Morrissey: Now, in the matter now before the court on a motion of the Chicago Land Clearance, a Corporation, versus Irma G. Rosenau, et al., 53-C-5659, in which the parcels are 1-9, 1-13 and 4-56 --

Mr. Brown: One of those --

Mr. Morrissey: -- an order having been heretofore entered by this court, consolidating for the purposes of trial on the issue of just compensation all three parcels, one of

the parcels, 1-13, having heretofore been in the Chicago Land Clearance versus LaSalle National Bank, 53-C-9428 which was consolidated for the purposes of trial on the issue of just compensation with the parcels now in this case, and therefore the matter before the court now is in the Rosenau case only.

The Court: And there are three parcels?

Mr. Morrissey: Three vacant parcels.

The Court: They are all vacant?

Mr. Brown: Judge, may I present my motion, in which I advise the court Mr. Joseph Kostner, who originally represented the defendant, is prepared to try this case, and we inform the court and Mr. Morrissey that we ask the court to enter an order quashing, and substituting for attorney-at-law Mr.
262 Kostner, to proceed with the trial.

The Court: You have a lot of trouble getting in and out! And is the attorney that is going to try the case here?

Mr. Kostner: I am here. I am Mr. Kostner.

The Court: You have no objection to this? You are ready to go to trial?

Mr. Kostner: After that I have a motion I wish to enter.

Mr. Morrissey: Judge, just a moment. I think, for the purpose of the record, I have no objection, of course, to Mr. Kostner's appearance now being re-instated, as he was the initiating counsel. I do object to the previous appearance being quashed. I want the record to show that the previous appearance was made, and is of record. There is no

reason why it should be quashed. It should be a substitution, if any, that's all. I have no objection to Messrs. Wisch and Crane stepping out of the case at this time, but I want their appearances to stand, since a previous continuance was granted upon their appearance in the case.

264 I think we agree on that order, then, Judge.

The Court: All right.

Are there any other motions, Mr. Kostner?

267 Mr. Kostner: At this time the petitioner is seeking to file a traverse the reason being that the owner of the property had been informed by a previous attorney, Mr. Harrington, that he was going to have a traverse filed, but no traverse was filed as she desired. At the time of the traverse agreement, 268 she had a detached retina operation. She couldn't see; she was in the hospital. I am her son. I was not a member of the bar. She again, at a later date, believed a second attorney was going to file a petition. Said attorney gave notice that he was going to file a traverse, but no petition was ever filed at any time.

Mr. Morrissey: If the court please, on April 22, 1955, by order of the Court at that time, the following order was entered:

"This matter having come on to be heard 269 on the motion of Joseph O. Kostner for leave to substitute for James A. Harrington as attorney for Florence D. Kostner; also for leave to file the appearance of Boyle and Friedman, attorneys, as co-counsel; and also for leave

to file a traverse within five days; and William F. Morrissey, attorney for petitioner having appeared and having objected to the motion for leave to file a traverse; and it appearing from the record filed in this case, that the petition to condemn was filed on June 10, 1953, that James A. Harrington of Arvey, Hodes and Mantynband, attorneys, filed an appearance for Florence D. Kostner on June 20, 1953, and it further appearing from the record that on January 26, 1954, a rule was entered upon all respondents in the above entitled cause to answer or otherwise plead to the petition to condemn within seven days thereof; and the respondent, Florence D. Kostner, having failed or refused to file any pleading within the said time; and it appearing from the record that more than twenty-
270 five continuances in the trial on the issue of just compensation having been granted to the respondent herein; now, therefore, it is ordered that the motion for leave to file a traverse by Florence D. Kostner is overruled and denied; it is further ordered that leave be, and it is, hereby given to Joseph O. Kostner, attorney, to substitute his appearance for James A. Harrington as attorney for Florence D. Kostner. This order is entered nunc pro tunc, as of the 14th day of February, 1955, dated at Chicago, Illinois, April 22, 1955."

That is all in the court record.

The Court: Whose order?

Mr. Morrissey: Judge Normoyle.

271 The Court: If this matter has been ruled on by Judge Normoyle, I shall not overrule Judge Normoyle.

Mr. Kostner: I didn't file anything. There was no set petition or traverse filed at that time to be ruled on. I am just saying, there
272 must be a petition for it to act upon.

Mr. Morrissey: The order speaks for itself.

273 The Court: What was the date of the entry of this order?

Mr. Morrissey: The order to which I referred, if the Court please, was dated April 22.

The Court: Typewritten order?

Mr. Morrissey: I believe it was, Judge, with some inter-delineations in it.

The Court: (To clerk:) See if you can find it. You go ahead. What was it you were talking about, the map?

277 The Court: Now, let me have the April 22 order.

279 The Court: Now, gentlemen, I have gone through this file here, and my conception of this matter -- all the preliminary pleadings were carried on before Judge Normoyle. This matter comes to me. If I am correctly advised -- I think I am, on examination of the file -- for a hearing to determine just one question, and that is the value of the property. On the question of the motion to file

traverse, and going back to reviewing those questions, they have all been presented to Judge Normoyle. That is in the record. Your record is saved. There is no question. If it is wrong, it is there; I can't correct it.

And, as far as the motion to file traverse, counsel, you have a motion showing in the record this morning. I am going to say to you, and rule, as that matter was formerly presented to and ruled upon by the court, the petition presented this morning I will have to deny.

282-290 Report of Proceedings before the Honorable Denis J. Normoyle on Friday, February 11, 1955 which was certified and ordered filed the 3rd of July, 1956 and which are in words and figures as follows:

Report Of Proceedings had at a hearing in the above entitled cause on a motion for leave to substitute attorneys and for leave to file a traverse before the Honorable Denis J. Normoyle, Judge of said Court, On Friday, February 11, 1955.

Appearances:

Mr. William F. Morrissey,
Appeared for Plaintiff;
Messrs. Boyle & Friedman, by:
Mr. Louis M. Friedman,
Appeared for Defendants.

283 Mr. Friedman: Your Honor, that is Parcel 1-13 on the LaSalle National Bank, and 1-9 and 4-56 on Rosenau.

The Court: 1-13, and what was the other?

Mr. Friedman: 1-9 and 4-56 in the Rosenau case.

The Court: Now, what is the story?

Mr. Friedman: There is a withdrawal of attorneys by Mr. Harrington, and a substitution by Mr. Kostner, the son of the owner, and by Boyle & Friedman as co-counsel. We are asking leave to --

The Court: When was the substitution?

Mr. Friedman: Pardon?

The Court: When was the substitution?

Mr. Friedman: I said we have a substitution.

The Court: Oh, you are presenting it.

Mr. Friedman: We are presenting it at this time.

The Court: You used the past tense.

Mr. Friedman: That was an error on my part. We are also asking leave to file within five (5) days our traverse in both of these cases.

284 The Court: My recollection is that Mr. Harrington was in here a number of times; we had a traverse on hearing there that took him almost a year. He did not participate. He said he would abide by the result of that traverse and not participate. That traverse -- I said that traverse, I mean a number of them, they have been overruled.

Now, let me ask you a few questions.

Mr. Morrissey: Yes.

The Court: I will get right in the clear with this.

When was service of process had on this Respondent?

Mr. Morrissey: In the LaSalle National Bank case, if I may chronilogically --

The Court: When was service of process?

Mr. Morrissey: The service of process was prior to June 29th, 1953.

The Court: That was June when?

Mr. Morrissey: June 29th, 1953.

The Court: All right. Now, how about the other, that is the 1-13.

Mr. Morrissey: Yes, sir. In the LaSalle case--

The Court: How about the other case?

285 Mr. Morrissey: In the other case the Petition was filed on April 2nd in the Rosenau case, filed on April 2nd, 1953, and the appearance was filed by Mr. Harrington in June of 1953. And in both cases he has, Your Honor, if I may go on, in both cases in January of 1954 there were orders entered on all Respondents.

The Court: There was a rule entered on all to plead within a certain date.

Mr. Morrissey: Yes.

The Court: You want me to violate my rule, do you?

Mr. Friedman: No, all I want you to do, Your Honor, is to put these parcels in the same position as the parcels to which we have filed our appearance, and have filed our traverse, and which traverse has been overruled.

The Court: Wait a moment; wait a minute. You haven't even filed an appearance yet, and you haven't filed a traverse. You are expressing things in the wrong way to me.

Mr. Friedman: You asked me what it was we wanted, and I said, no, that was not what we wanted, and I told you what we did want.

The Court: Go on. Provided you are granted leave to file a traverse, which you won't
286 get because of the rule that was entered in 1954, over a year ago.

Now what?

Mr. Friedman: May this matter be continued until Monday, if Your Honor please, in place of this?

The Court: When is the case set for trial?

Mr. Morrissey: Monday, sir.

Mr. Friedman: I am placed in this position, Mr. Boyle intended to be here this morning. He is completely familiar with this, he spoke to the owner of these parcels and to Mr. Kostner on it. Unfortunately a client of ours suddenly had a strike called on him yesterday, and a conference was set for this morning.

The Court: All right.

Mr. Friedman: I mean, Mr. Boyle had to be out there.

The Court: I think I am somewhat familiar with it because the distinguished lady has been in and talked with me several times; Mrs. Kostner is the one who I am speaking about, is that correct?

Mr. Friedman: Correct.

The Court: Yes, I am familiar with the case.

287 But the case is going to be tried.

Mr. Friedman: We have no objection to it being tried; we want it to be tried.

The Court: And I might state, I have told you about Mr. Harrington's previous statement, but you haven't observed them. Before you asked to come into the case you hadn't inspected the file to note that the rule had been entered, had you?

Mr. Friedman: I have not.

The Court: You had not?

Mr. Friedman: No.

The Court: Now, what is the picture?

Mr. Morrissey: I have no objection to the order allowing substitution.

The Court: The notice covers two items. They will come together, and it will be one order, and the order will recite everything of the past.

Mr. Morrissey: Very well.

The Court: So it is either today, or when anyone else comes in, that will be the order.

You know, we get weary of being toyed with.

Mr. Friedman: Judge, you are not inferring that we are doing any toying.

The Court: No, that a rule was entered to
288 plead, and your client was represented by counsel, and in Court at the time. Now, what am I to do?

Mr. Friedman: All we are asking, we are not trying to delay it with the traverse, we are expecting, if an order is entered permitting us to file a traverse that we will come under the same position.

The Court: Don't pass that, you are not going to get any order permitting you or any

other litigant, when a rule is entered upon them to plead by a certain time to let them have a year go by and then come back. No, I can't do it for you as attorney for Mrs. Kostner or anyone else. I would then have to do it for everyone else, and I'd do it every day. I am not going to do it, it is simple.

Mr. Friedman: Well, Judge, may this go over until Monday for the purpose of an order being prepared, and if Mr. Boyle has anything further to say or ask of Your Honor he can do it at that time.

The Court: The only answer I have is this, before a man comes into a case he ought to have inspected the record. And, if you had inspected the record, if you had inspected even the docket you wouldn't have made the
289 motion.

Call the next.

Mr. Friedman: May this be held over till Monday morning for the purpose of an order being entered?

The Court: That is the question. It is your lawsuit, gentlemen, not mine, I am just the Judge. If you want to agree on something you may, but I'm not it.

292 Substituted copy of notice of motion to be heard on February 3, 1956, filed July 16, 1956.

293 Certificate of the Clerk that the foregoing is a true, perfect and complete record

on appeal as designated in the praecipe and additional praecipe.

Respectfully submitted,

JOSEPH O. KOSTNER and
MORTIMER, NOLAN,
O'MALLEY & DUNNE
105 So. LaSalle Street
Chicago 3, Illinois
Attorneys for Florence Kostner,
Respondent, Appellant

JUN 14 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. ~~1092~~ 194

FLORENCE KOSTNER,

Petitioner,

vs.

CHICAGO LAND CLEARANCE COMMISSION, a Municipal Corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

WILLIAM D. SALTIEL,
10 S. La Salle Street,
Chicago 3, Illinois,
Attorney for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Florence Kostner, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered in the above-entitled cause on January 24, 1957.

Opinion Below:

The opinion of the Supreme Court of Illinois (No. 34174) is reported in 10 Ill. 2d 501. A copy thereof is attached hereto as Appendix A.

Jurisdiction:

(I) The judgment of the Supreme Court of Illinois is dated and was entered on January 24, 1957. (II) The date of the order denying the rehearing was March 19, 1957. (III) The statutory provision believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari is Title 28 U.S.C.A. Sec. 1257 (3).

Questions Presented For Review:

Chicago Land Clearance Commission was created as municipal corporation by the Illinois legislature. It was granted the power to acquire real estate by eminent domain proceedings.

In April 1953 it brought suit in the Circuit Court of Cook County to condemn several parcels of real estate including three parcels owned by the petitioner here. Petitioner having been served with process entered her appearance (by her attorney) in June 1953. Six or seven months later and in January 1954 the Trial Judge entered an order, in substance providing that all parties defendant desiring to challenge the right to bring the proceedings shall do so by written pleading within 7 days thereafter; failing so to do defendants not so contesting shall be deemed to have waived the right to contest and the right of the Commission to proceed to have just compensation determined (R. 20). Thereafter and on three occasions, viz., on April 22, 1955 (R. 34); on June 13, 1955; and on Oct. 31, 1955 (R. 53), petitioner sought leave of the Trial Court to file a pleading challenging the right to condemn. On each occasion leave was denied based upon the order entered in January 1954 denying such right after a seven-day period. The tendered traverse (R. 44-53) offers of twenty-eight points of challenge

amongst which is an assertion (R. 47; point No. 26) that the petitioner is denied rights under the 14th amendment to the Constitution of the United States.

In Illinois its Constitution restricts the sovereign power of eminent domain by providing that private property shall not be taken for public use without just compensation. An enabling statute of the legislature does not limit the time for contesting the right to take nor does it provide that any defense pleading be filed. Thus the instant case presents a picture wherein the Trial Judge by judicial fiat, so to speak, proceeds to fix a seven-day barring period and thereafter refuses to allow challenge when challenge was offered on three different occasions.

Thus the question presented here for review is: Can a State Trial Court in an eminent domain proceeding bar a property owner from questioning the right of the public authority to condemn, solely by court order, and contrary to legislative policy as declared, and thereby cut off all constitutional and other issues? Does not such procedure defy the constitutional mandate found in the 14th Amendment to the Constitution of the United States?

Illinois Constitution, Article and Section and Statutes Involved:

The part of the constitutional provision of the Illinois Constitution involved is found in Sec. 13 of Article II and is as follows:

> "Private property shall not be taken or damaged for public use without just compensation."

Sections 2, 2a, 5 and 5a of the Eminent Domain Act of the Illinois Legislature (Chap. 47 Ill. Rev. Stat. 1955) are set forth in Appendix B. The plaintiff below was created by virtue of the provisions of what is commonly

known as "Blighted Area Redevelopment Act of Illinois" Sec. 63 to 91, Chapter 67½ Ill. Rev. Stat. 1955. Inasmuch as the review sought in this Court does not at this time involve the validity of this Act or any part thereof, we do not deem it necessary to spell out the entire enactment or any of its provisions.

Statement of the Case:

The Chicago Land Clearance Commission, a municipal corporation, was created under the provisions of what is termed the "Blighted Area Redevelopment Act" of Illinois of 1947 (Sec. 63-91, Chap. 67½ Ill. Rev. Stat. 1955).

On April 2, 1953, the Commission filed a proceeding in the Circuit Court of Cook County, Illinois, to condemn several parcels of real estate in the City of Chicago (Abs. 1 to 10). Petitioner here who owned three parcels of real estate in the area was named as a defendant. On May 14, 1953, she, through an attorney entered her written appearance. Between September 1953 and Jan. 26, 1954, orders were entered from time to time dealing with trial as to various parcels involved (R. 10 to 19). On Jan. 26, 1954 (R. 20) the following order was entered by the then presiding Trial Judge.

> "On Motion of William F. Morrisey, and Wilson McIlvane, counsel for Petitioner herein;
>
> It is ordered, that all respondents herein who desire to contest the right of the Petitioner to maintain this condemnation suit and who have not heretofore done so be, and they are, hereby ruled to file a traverse or other proper pleading contesting such right within seven days from this date; and if such pleading is not filed within this period, respondents will be deemed to have waived the right to file such pleading or to contest the right of Petitioner to proceed to have just compensation determined.

On April 22, 1955, an order was entered in substance as follows (R. 34): (a) permitting new counsel to be substituted as attorneys for the petitioner here; (b) that it appearing that the petition for condemnation was filed on Apr. 2, 1953 and that counsel filed an appearance for Florence D. Kostner in June 1953; that an order was entered on Jan. 26, 1954 ruling all respondents to plead within 7 days; that Florence Kostner failed and refused to file any pleading within said time; (c) it appearing from the records that more than 25 continuances in the trial on the issue of just compensation have been granted to the respondent (Florence Kostner); accordingly the motion of the new (substituted counsel) for leave to file a traverse within 5 days is denied.

On June 13, 1955 (Rec. p. 43) petitioner here (Florence Kostner) filed another petition seeking permission of the then Trial Judge to file a traverse to the condemnation petition; she stated that she had been ill for some period of time and unable to see; that she assumed that a traverse had been filed in apt time in 1954. On said date she again tendered a written traverse; this traverse contained some 29 objections to the right to bring and maintain the condemnation proceedings. (R. p. 45 to 48, inc.) Amongst the objections so tendered was objection No. 26 (R. p. 47) which charged that the condemnation petition and proceedings defied the Fourteenth Amendment to the Constitution of the United States. The application for leave to file the traverse was continued from time to time thereafter and finally overruled on Feb. 14, 1956 (Rec. 63). The opinion of the Trial Judge is found in the record (R. 63) and is attached hereto as (Appendix C). Thereafter the cause proceeded to trial before a jury limited only as to just compensation. No evidence was offered nor proof tendered by the condemnation peti-

tioner relative to the right to bring or maintain the proceeding (R. 51) pursuant to the Illinois constitutional mandate and the enabling legislation creating the petitioner and prescribing its rights and duties (R. 51). Judgment was entered on the verdict of the jury fixing the compensation (R. 51).

Thereafter an appeal was taken to the Supreme Court of Illinois (R. 52) which court affirmed the Trial Court's judgment order (Appendix D); the opinion of the Supreme Court of Illinois is attached hereto as Appendix A.

In the traverse tendered for filing on June 13 (R. p. 43), and in point 26 (R. p. 47) the petitioner here charged that the taking of her property by condemnation was violative of both the State and Federal Constitutions; specifically averring defiance of the mandate of the 14th Amendment to the Constitution of the United States.

The Trial Court and the reviewing Court, viz., the Supreme Court, treated the question of the right to challenge as presenting solely a question of the exercise of judicial discretion and ergo did not undertake to pass upon the constitutional questions raised.

The Copy of the Judgment of the Court Below:

Appendix (D) hereto is a copy of the judgment of the State Supreme Court and its order denying petitioner's petition for a rehearing.

ARGUMENT.

Implementing the constitutional restraint found in Sec. 13 of Article II of the Illinois Constitution adopted in 1870, the legislature adopted the Eminent Domain Act in 1872. (Chap. 47 Ill. Rev. Stat. 1955.) A reading of the enactment demonstrates that this act is nothing more than a procedural act spelling out the procedure to be followed in the taking of private property for public use. In Appendix "B" we have set forth the pertinent sections of this enactment as they apply to the questions raised by this petition. We find that in Section 2 the necessary averments in the condemnation petition are spelled out. It is here noted that the instant proceedings were brought under Section 2. Section 2(a) treats with the right to take before compensation is awarded by a deposit of funds with the Clerk of the Court. Section 5 reads as follows:

> "No cause shall be heard earlier than twenty days after service upon defendant."

It then provides for the right to file amendments to the petition.

It is further noted that no part of Section 5 or any other section of this statute prescribes any day, time or date when the defendant shall plead nor is there spelled out that a defendant is required to file any pleading in defense of the petition. The Supreme Court of Illinois has so interpreted the statute (see *O'Hare* v. *C., M. & N. R. R. Co.*, 139 Ill. 151; *Chicago Housing Authority* v. *Berkson*, 415 Ill. 159). It is most singular, however, that where the property is taken prior to the trial as to compensation that by Sec. 5(a) it is provided that a defendant

desiring to challenge the validity of the taking shall do so by written pleading either on the return day of the summons or within 20 days after the filing of the declaration of taking. We therefore present the following query: the legislature having adopted a procedural act fixed the time to plead in one type of proceedings and did not fix the time to plead or even to declare that any pleading should be filed where the taking is postponed until after trial. Why? Was it not intended that in the latter type of case no defense pleading was necessary and ergo that the right of a defendant to raise all questions relative to the right to take may be asserted at any time prior to the ultimate judgment day fixing compensation; or at least until the time that a jury trial commences; and we urge that no pleading was necessary or at least that such a pleading might be filed and must be passed upon before a hearing commences upon the issue of fair compensation. The foregoing is strongly indicated if the Supreme Court of Illinois in the cases hereinabove cited (*O'Hare* v. *C., M. & N. R. R. Co.*, 139 Ill. 151; *Chicago Housing Authority* v. *Berkson*, 415 Ill. 519).

In Illinois the Supreme Court is committed to the doctrine that rules of practice are a legislative function; ergo if the legislature sees fit to differentiate as to the required filing or non filing of certain pleadings such declaration of policy is binding on the Illinois Courts. Postponement of trials, confusion and the crowding of calendars are matters upon which the appeal to the legislature should be made in these condemnation cases and should not be the basis of policy declaration by judicial fiat.

In spite of the fact that the legislature neither required a pleading to be filed by the defendant or is any fixed a time for contest as to validity and right to take, the

Trial Judge took it upon himself about six months after the suit was filed to enter a barring order (R. 20) fixing 7 days within which to file a contest pleading or in the alternative to be deemed to have waived the right to contest at any time thereafter. Thereupon when the petitioner here sought on three occasions to file a challenging pleading all before trial as to compensation (R. 34, 43, 62) two Trial Judges adhering to the barring order (R. 20) refused to entertain such pleading treating the barring order as valid and the exercise of discretion by the judge who entered the order; and the Supreme Court of Illinois (Appendix A) in its opinion recognizing the all important right of private property owners to be protected in their property rights, continued to consider the question as one of discretionary prerogative in the trial court and not as effecting substantial or fundamental rights; for we find the Supreme Court of Illinois saying,

> "Nor are we unmindful that the process of taking private property for public use may be tyranically and unfairly exercised; and that the right of an individual to protect his property against the taking by the State is a sacred one * * *"

By this language the Supreme Court may have given the answer to the question we have propounded here and has given the reason why the legislature deliberately refused to provide for the filing of any pleading or to say the least fixed a barring date for the filing of a defense pleading. The right of an individual in condemnation cases is a "sacred one" and he should have all and every opportunity to protect the right. If the right of protection is a "sacred one" then any attempt to bar that right by an unauthorized court order, defies an opportunity to be heard. Such an order is an en-

croachment by a court on the prerogative of the legislature and is wholly outside of the powers of the court.

In the case at bar this is particularly emphasized by the fact that the petitioner charged that the right to take in the suit as brought was defiant of both the State and Federal Constitutions (R. 47). She was denied the right and opportunity to urge such questions by the unconstitutional court order.

In the opinion of the Supreme Court (Appendix A) it is stated that the record discloses that, early in 1954 this petitioner's then counsel stated that he did not intend to file a contesting pleading, from which a waiver is attempted to be spelled out. No reference is made to the record itself to support the assertion. Such statement is not borne out by the record. The assertion is not borne out by any court order or finding; it is found in statement made by the Land Commission's counsel (R. 56) in addressing the trial judge in opposition to then pending second or third motion for leave to file a traverse pleading. To the contrary, however the record discloses an order entered on April 22, 1955 (R. 34) overruling defendant's first motion for leave to file a traverse. While the order bespeaks of a substitution of attorneys in behalf of the petitioner here for the attorney who supposedly waived the contest right, it is completely silent as to the so called waiver. One would think that if there was such a waiver, the Court would bespeak thereof in denying the application for leave to contest when first made as at least one of the reasons for overruling said motion. All in all considered, it is respectfully submitted that the refusal of the Illinois Courts to permit the contest as sought by the petitioner was an unlawful denial to her of an opportunity to be heard on a fundamental issue in a condemnation proceeding.

Petitioner prays that a writ of certiorari be granted to her.

Respectfully submitted,

WILLIAM D. SALTIEL,
Attorney for Petitioner.

APPENDIX A.

The opinion of the Supreme Court of Illinois in the instant case, Docket No. 34074—September Term, 1956, Chicago Land Clearance Commission, Appellee, vs. Irma C. Rosenau et al.—(Florence Kostner, Appellant.) (10 Ill. 2d 501)

Mr. Justice Bristow delivered the opinion of the court:

This appeal presents but a single issue, namely did the trial court act improperly in denying leave to appellant, Florence Kostner, to file a traverse to a petition to condemn three vacant parcels of property owned by her. Chronologically we will outline the proceedings in the court below: the petition to condemn was filed on April 2, 1953; appellant's appearance was entered by a competent firm of lawyers on May 14, 1953; on September 14, 1953, on a preliminary call of the condemnation calendar, October 1, 1953, was fixed as the date for a pretrial conference for the purpose of ascertaining just compensation and hearing was ordered on traverses then on file a to certain parcels to be set for October 6, 1953; the instant case was on the trial call and was continued from time to time for the purpose of a hearing on the issue of just compensation, and the docket entry evidencing same appears as of these dates, October 1, 1953, November 2 and 16, 1953, December 7 and 21, 1953, January 18 and 25, 1954. Throughtout, there was no request made for leave to file a traverse.

On January 26, 1954, an order was entered requiring all defendants desiring to contest the right of petitioner to maintain the condemnation suit, and who had not theretofore done so, to file a traverse or other pleading con-

testing petitioner's right to condemn within seven days from the date of this order, or be deemed to have waived the right to file such pleading. Immediately thereafter, James A. Harrington, one of Mrs. Kostner's attorneys, stated to the court that he did not intend to file traverse on behalf of the properties involved in this appeal, but would abide the court's decision on traverse then pending as to other parcels in the proceeding.

After the January 26, 1954, order, the case involving the parcels of real estate herein was placed again on the trial call and was continued from time to time for the sole purpose of hearing the issue of just compensation. The record discloses continuance orders as of these dates: January 27 and 28, 1954; February 2, 1954, March 29 and 31, 1954, May 6, 24, 25, 26, 27 and 28, 1954; June 1, 7, 8, 9, 10, 11, 22 and 29, 1954; September 20, 1954; October 25 and 27, 1954; November 15 and 22, 1954; December 15 and 17, 1954, and January 24, 1955. Then the cause was continued to February 14, 1955. It will thus appear that almost one year elapsed after the order of January 26, 1954, and there was still no request to file a traverse.

On February 11, 1955, a motion was presented to the trial court for leave to substitute Joseph O. Kostner and Boyle & Friedman as attorneys for Mrs. Kostner, in lieu of Arvey, Hodes & Mantynband and James A. Harrington, and also for leave to file a traverse on behalf of Mrs. Kostner. This was denied on the same date. Later Boyle and Friedman withdrew as counsel for Mrs. Kostner. No showing by affidavit or otherwise was made to excuse Mrs. Kostner's long delay. On April 22, 1955, an order was entered by Hon. Denis J. Normoyle as follows: "It is further noted by the Court that Parcels 1-9 and 4-56 represented by Joseph O. Kostner, an attorney, have been continuously on the trial call on each court day from April 11,

1955, to the date hereof and the said Attorney has failed to appear and answer. Pursuant to the Court's direction, William F. Morrisey, attorney, informs the Court that he called Joseph O. Kostner yesterday, April 21st, to be present this date and that Mr. Kostner said he would appear. It is now 10:30 o'clock a.m. and Mr. Kostner has failed to appear and answer. It is therefore ordered that the trial on the issue of just compensation as to Parcels 1-9 and 4-56 be, and it is, again continued and set for Monday, April 25, 1955 at 10:00 a.m." Mr. Kostner was notified of this order.

On April 28, 1955, a petition for change of venue was filed on behalf of Mrs. Kostner, (hereinafter called defendant,) stating her belief "that she will not receive a fair trial because the trial court is prejudiced against her and that she was first apprised of said prejudice within the preceding five days." This petition was granted over the objection of petitioner and the cause was transferred to the chief justice for reassignment. The cause was set for trial for May 23, 1955, and on that date Joseph O. Kostner withdrew as attorney for defendant and Wisch and Crane entered their appearance as her attorneys. On May 31, 1955, on order was entered setting the trial on the issue of just compensation for June 13, 1955, at the head of the trial call and on that date an order was entered that the substitution of attorneys, filed on May 23, 1955, by Wisch and Crane, be withdrawn and that the appearance of Joseph O. Kostner heretofore filed in the cause stand as the appearance for the defendant.

After the change of venue was granted on April 28, 1955, the case was assigned to Judge Lee W. Carrier, who then entered three orders. The first was on May 4, 1955, setting the trial "on the issue of just compensation" on

May 23, 1955; the second May 23, 1955, on stipulation of defendant's attorney, consolidating certain parcels owned by her "on the issue of just compensation;" and the third on May 31, 1955, setting the trial "on the issue of just compensation" for June 13, 1955. At no time throughout this period was there any intimation of a desire to file a traverse.

On June 13, 1955, a petition verified by defendant was presented to the court and in it she stated: "due to her hospitalization in the winter and spring of 1954 and convalescence during the summer that she was unable to see. That she further believed that her rights to dispute the taking were being protected by her attorney. That no traverse was filed as she desired. That on February 16, 1955, after she had been apprised of the fact that no traverse was filed, she believed that a written request to file a traverse and an appearance of new counsel would be made. That this was not done and no appearance was entered. That she was endeavoring to secure experienced counsel until May 25, and was unsuccessful due to the acceptance and refusal of various attorneys."

Then a new law firm entered their appearance, namely, Mortimer, Knowland, O'Malley and Dunne. The petition for leave to file a traverse having been denied, there was a trial, the results of which were set aside for reasons not important on this appeal. On October 24, 1955, a second trial was commenced and Judge Carrier's illness necessitated a mistrial order.

The cause was again set for trial on February 6, 1956, before Judge Ezra Clark. Three days prior thereto defendant's attorney filed a motion, together with his affidavit, requesting that the order entered on June 13, 1955, denying leave to file a traverse be reconsidered. The court, in

denying this motion stated: "I am certainly inclined to think that in view of all the circumstances, the order entered by Judge Normoyle referring to the filing of any traverse that the Respondent desired to file within a time fixed by the court in that order is certainly a valid order. It is certainly within his jurisdiction. That order was not complied with. Subsequent to that time the same motion was presented to Judge Carrier. The motion was denied. So far as I am concerned, I am not at this date and in view of the circumstances going to allow the motion. The motion will be denied, and we will proceed to trial upon the issue of just compensation."

Then on February 18, 1956, there was a trial resulting in a judgment order ascertaining just compensation for the parcels of land here involved. This appeal followed. It hardly seems necessary, in view of the foregoing history of this proceeding, to discuss reasons or precedents in support of our conclusion that this judgment should be affirmed. This summary treatment does not signify that we have not considered the able briefs presented on both sides; nor are we unmindful that the process of taking private property for public use may be tyranically and unfairly exercised; and that the right of an individual to protect his property against the taking by the State is a sacred one. Of importance, too, is the necessity for orderly and prompt disposition of the ever increasing number of condemnation proceedings. Progress with its highways and toll-roads construction, school programs and the clearance of slum and blighted areas have added their share to this mounting increase. If all defendants in a condemnation proceeding are required to file their traverses or motions to dismiss within a specified time, then the trial court can control its calendar and try all those traverses which raise the same question and dispose of them on one hearing.

On the other hand, if each defendant is to have the right to file his traverse or motion to dismiss whenever he sees fit to do so, then the trial court will be obliged to try the very same question over and over again. This would compounds the evils that the crowded court calendars in Cook County already present.

We therefore conclude that the trial court did not abuse its discretion in refusing leave to Mrs. Kostner to file a traverse, and the judgment of the trial court is affirmed.

Judgment affirmed.

APPENDIX B.

Chap. 47 Ill. Rev. Stat. 1955.

§ 2. **Proceedings—Parties**

Where the right to take private property for public use, without the owner's consent or the right to construct or maintain any public road, railroad, plank-road, turnpike road, canal or other public work or improvement, or which may damage property not actually taken has been heretofore or shall hereafter be conferred by general law or special charter upon any corporate or municipal authority, public body, officer or agent, person, commissioner or corporation and the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes above mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a non-resident of the state, it shall be lawful for the party authorized to take or damage the property so required, or to construct, operate and maintain any public road, railroad, plankroad, turnpike road, canal or other public work or improvement, to apply to the circuit or county court of the county where the said property or any part thereof is situate, or to the judge thereof in vacation by filing with the clerk a petition, setting forth, by reference, his or their authority in the premises, the purpose for which the said property is sought to be taken or damaged, a description of the property, the names of all persons interested therein as owners or otherwise, as appearing of record, if known, or if not known stating that fact and praying such court or judge to cause the compensation to be paid to the owner to be assessed. If the proceedings seek to affect the property

of persons under guardianship, the guardians, or conservators of persons having conservators, shall be made parties defendant, and if of married women their husbands shall also be made parties. Persons interested, whose names are unknown, may be made parties defendant by the description of the unknown owners; but in all such cases an affidavit shall be filed by or on behalf of the petitioner, setting forth that the names of such persons are unknown. Where the property is sought to be taken or damaged by the state for the purpose of establishing, operating or maintaining any state house or state charitable or other state institutions or improvements, the petition shall be signed by the governor or such other person as he shall direct, or as shall be provided by law. 1872, April 10, Laws 1871-2, p. 402, § 2; 1933 June 21, Laws 1933, p. 586, § 1.

§ 2a. Declaration of taking—Title vests in State when—Judgment—Clerk's fee—Payment of money deposited in court—Postponement of right of entry—Orders

In any proceeding instituted by and in the name of the State of Illinois under this Act,[1] for the purpose of acquiring title to any real property, for highway purposes, and for housing purposes provided for in the "Blighted Vacant Areas Development Act of 1949," enacted by the 66th General Assembly,[2] the petitioner may file in the cause with the petition, or at any time before judgment, a declaration of taking signed by the Governor of the State of Illinois, or his duly authorized agent in that behalf, declaring that such real property is thereby taken for a public purpose of the State of Illinois. The declaration of taking shall contain or have annexed thereto the following:

(1) A statement of the public use for which such real property is taken.

(2) A description of the real property taken sufficient for the identification thereof.

(3) A statement of the estate or interest in such real property taken for said public use.

(4) A plan showing the real property taken.

(5) A statement of the amount of money estimated to be just compensation for the real property taken.

Upon the filing of the declaration of taking and of the deposit with the Clerk of the Court in which the proceeding is pending, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, title to the real property in fee simple absolute, or such less estate or interest therein as is specified in the declaration, shall vest in the State of Illinois, and such real property shall be deemed to be condemned and taken for the use of the State of Illinois, and the right to just compensation for the same shall vest in the person or persons entitled thereto. Such compensation shall be ascertained and awarded in the proceeding and established by judgment therein, and the judgment shall include, as part of the just compensation awarded, interest at the rate of six per cent per annum on the amount finally awarded as the value of the real property from the date title vests in the State of Illinois to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the Clerk of the Court. A reasonable fee to be fixed by the Court and paid by the State of Illinois shall be allowed to the Clerk of the Court for receiving, retaining or disbursing any moneys deposited with the Clerk of the Court in accordance with this section.

Upon the application of any party in interest, and upon due notice to all parties, the Court shall order that the

money deposited in the Court, or any part thereof, be paid forthwith to the person or persons entitled thereto for and on account of the just compensation to be awarded in the proceeding, without prejudice to the further rights of any party to the proceeding. If the compensation finally awarded shall exceed the amount of money so deposited, the Court shall enter judgment against the State of Illinois and in favor of the party or parties entitled thereto for the amount of the deficiency. If the compensation finally awarded shall be less than the amount of money so deposited and paid out, the Court shall enter judgment in favor of the State of Illinois and against the proper party or parties for the amount of the excess.

Upon the filing of the declaration of taking and the deposit with the Clerk of the Court of the estimated compensation, the State of Illinois shall thereupon have the right of entry and the parties in possession shall be required to surrender possession to the petitioner; provided, however, in case of undue hardship to the persons in possession the Court may postpone said right of entry to a day in no event no later than six (6) months after the date that title vests in the State of Illinois; and provided, further, that no right of entry shall be exercised earlier than five (5) days after such vesting of title; and provided, further, that the Court shall not postpone such right of entry in any case where the party in possession has received any part of the award, unless such party agrees to pay to the State of Illinois during the period of his occupancy such reasonable rental as may be fixed by the Court.

The Court shall have power to direct the payment of delinquent taxes and special assessments out of the amount determined as just compensation and to make such orders in respect of encumbrances, liens, rents, insurance, and

other charges, if any, as shall be just and equitable. 1872, April 10, Laws 1871-72, p. 402, § 2a, added 1947, July 21, Laws 1947, p. 905, § 1, as amended 1949, Aug. 13, Laws 1949, p. 866, § 1.

§ 5. Hearing

No cause shall be heard earlier than twenty days after service upon defendant or upon due publication against non-residents.

Any number of separate parcels of property, situate in the same county, may be included in one petition, and the compensation for each shall be assessed separately by the same or different juries, as the court or judge may direct.

Amendments to the petition, or to any paper or record in the cause, may be permitted whenever necessary to a fair trial and final determination of the questions involved.

Should it become necessary at the any stage of the proceedings to bring a new party before the court or judge, the court or judge shall have the power to make such rule or order in relation thereto as may be deemed reasonable and proper; and shall have power to make all necessary rules and orders for notice to parties of the pendency of the proceedings, and to issue all process necessary to the execution of orders and judgments as may be entered. 1872, April 10, Laws 1871-72, p. 402, § 5; 1933, June 21, Laws 1933, p. 586, § 1; 1935, June 28, Laws 1935, p. 826, § 1.

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[1] Section 1 et seq. of this chapter.
[2] Chapter 67½, §§91.1-91.7.

§ 5a. **Motion to strike declaration of taking and dismiss suit**

In any case in which a declaration of taking has been filed as provided in Section 2a,[1] supra, any defendant desiring to raise any question with respect to the validity of the taking shall do so by filing a motion to strike the declaration of taking and dismiss the suit. The motion shall be made on or before the return day mentioned in the summons or notice of publication, or within 20 days after the filing of declaration of taking, whichever is later. Failure to file such motion within the time herein provided is a waiver of the right of any defendant to challenge the validity of taking. 1872, April 10, Laws 1871-72, p. 402, § 5a, added 1949, Aug. 13, Laws 1949, p. 866, § 1.

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[1] Section 2a of this chapter.

APPENDIX C.

Trial Judge's opinion found on p. 62 of Record:

The Court: "I don't think it makes one bit of difference. The question involved here is subsequent filing. The very simple question presented to this Court as to whether at this time in view of all that has transpired in the past, in the intervening time between the filing of the petition and the present date, whether at this time the Court could permit the filing of the traverse without regard to when, under the law, a traverse must be filed; and after listening to arguments of counsel, the Court does not see, has not had it pointed out to him, any particular, definite, specific law in regards to this matter.

I'm certainly inclined to think that in view of all the circumstances, the order entered by Judge Normoyle referring to the filing of any traverse that the Respondent desired to file within a time fixed by the Court, in that order is certainly a valid order. It is certainly within his jurisdiction. That order was not complied with. Subsequent to that time the same motion was presented to Judge Carrier. The motion was denied.

So, as far as I am concerned, I am not at this date and in view of the circumstances going to allow the motion. The motion will be denied and we will proceed to trial upon the issue of just compensation.

APPENDIX D.

Final Orders of Supreme Court of Illinois.

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Cook County aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor. Entered on January 14, 1957.

On March 19, 1957 the following order was entered:

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

Office Supreme Court, U.S.
FILED
JUL 10 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. ~~1092~~ 194

FLORENCE KOSTNER,

Petitioner,

vs.

CHICAGO LAND CLEARANCE COMMISSION,
A MUNICIPAL CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR THE CHICAGO LAND CLEARANCE COMMISSION IN OPPOSITION.

WILLIAM H. DILLON,
111 W. Washington Street,
Chicago 2, Illinois,
Attorney for Respondent.

IN THE

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BRIEF FOR THE CHICAGO LAND CLEARANCE COMMISSION IN OPPOSITION.

STATEMENT OF THE CASE.

This was a proceeding to acquire 236 parcels of real estate totalling 26 acres (Addl. Rec. 6) situated in a slum and blighted area for resale and redevelopment pursuant to the Blighted Areas Redevelopment Act of 1947, as amended (Ill. Rev. Stat. 1953, Ch. 67½, Secs. 63 to 91), including three parcels of vacant property owned by Florence Kostner, Petitioner herein (R. 67), and known as Parcels Nos. 1-9, 4-56 and 1-13 (R. 40, 41). The constitutionality

of the Act was upheld in *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310 (cert. den. 344 U. S. 824).

The Chicago Land Clearance Commission (hereinafter referred to as "Commission") on March 28, 1951, made its determination that the area in question was a slum and blighted area (R. 3). That determination was approved by the City Council of the City of Chicago on October 11, 1951 (R. 3, 4) and by the State Housing Board on November 7, 1951 (R. 4). The area is shown on page 7 of the Additional Record filed herewith. All of the parcels of property have been acquired (Addl. Rec. 6) and certain portions of the area have been sold (Addl. Rec. 6, 8) to be redeveloped in accordance with the approved plan of redevelopment (Addl. Rec. 6 and 7). A sale of a segment of the area in which one of Mrs. Kostner's parcels is situated has been approved by the Commission, the City Council of the City of Chicago and the State Housing Board (Addl. Rec. 4, 8) and is being delayed pending the outcome of this proceeding (Addl. Rec. 4).

The petition to condemn, including the three parcels owned by Petitioner herein, was filed on April 2, 1953 (R. 55). The appearance of the Petitioner, Florence Kostner, was filed by her attorneys, Arvey, Hodes & Mantynband, and James A. Harrington, on May 14, 1953 (R. 10). The Supreme Court of Illinois in its opinion (Appendix A, p. 1a) referred to these attorneys as "a competent firm of lawyers".

In September 1953 the trial court fixed October 1, 1953 as a date for a pretrial conference for the purposes of ascertaining just compensation and hearing was ordered on traverses then on file as to certain parcels to be set for October 6, 1953 (R. 15). During the period between October 1, 1953 and January 26, 1954, the case, including Mrs. Kostner's parcels, was on the trial call on repeated dates

for the purpose of a hearing on the issue of just compensation and was continued from time to time (R. 15 to 19).

On January 26, 1954, an order was entered by Judge Denis J. Normoyle requiring all defendants desiring to contest the right of the Commission to maintain the condemnation suit and who had not theretofore done so, to file a traverse or other pleading contesting the Commission's right to condemn within seven days from the date of the order or be deemed to have waived the right to file such pleading (R. 19, 20). Immediately thereafter James A. Harrington, one of Mrs. Kostner's attorneys, stated to the court that he did not intend to file a traverse on behalf of the properties owned by Mrs. Kostner but would abide the court's decision on traverses then pending as to other parcels in the proceeding. At page 10 of her petition herein Mrs. Kostner states that "this statement is not borne out by the record". Mrs. Kostner's statement is incorrect as shown by the report of proceedings had before Judge Normoyle on February 14, 1955, certified by him to be correct (R. 71) wherein he states that such an agreement was made (R. 72).

After January 26, 1954 the case, including the parcels owned by Mrs. Kostner, again appeared on the trial call on repeated occasions for the sole purpose of hearing the issue of just compensation and was continued from time to time to February 14, 1955 (R. 20 to 32). It will thus appear that over one year elapsed after the order of January 26, 1955, and one year and eight months after the date (May 14, 1953) that Mrs. Kostner entered her appearance in the proceeding, and at no time was a request made by Mrs. Kostner to file a traverse.

On February 14, 1955, a motion was presented for leave to substitute Joseph O. Kostner (Mrs. Kostner's son) (R. 72) and Boyle & Friedman as attorneys for Mrs. Kos-

tner, and also for leave to file a traverse (R. 71 to 76). The motion for leave to file a traverse was denied. The formal order was entered on April 22, 1955 (R. 34) *nunc pro tunc* as of February 14, 1955 (R. 35). No showing by affidavit or otherwise was made to excuse Mrs. Kostner's long delay.

The report of the proceedings (R. 71 to 76) had and taken on February 11, 1955, on the hearing on the foregoing motion before Hon. Denis J. Normoyle, trial judge, and certified by him to be correct (R. 71) shows that the trial judge in denying the motion for leave to file a traverse referred to the order of January 26, 1954; to the agreement made on or about January 26, 1954, by Mrs. Kostner's attorney that he did not intend to file a traverse but would abide the result of other traverses; that the other traverses referred to by Mrs. Kostner's attorney had been disposed of after an extended trial and had been overruled prior to February 11, 1955 (R. 72, 75) and that Mrs. Kostner had been in to see him (Judge Normoyle) on several occasions (R. 74).

Thereafter Boyle & Friedman withdrew from the case (R. 58, 59). On April 22, 1955 Judge Normoyle entered an order reciting that Mrs. Kostner's parcels had been on the trial call each court day from April 11, 1955 and that Joseph O. Kostner, Mrs. Kostner's attorney, had not appeared in court on any of these days, and the matter was continued to April 25, 1955 (R. 36, 37). Mr. Kostner was notified of this order and on April 28, 1955 filed a petition for change of venue (R. 38). The change of venue was granted and the cause was transferred to Judge Lee W. Carrier, and it was set for trial on May 23, 1955 (R. 40). On that date Mr. Joseph O. Kostner withdrew as attorney and Wisch & Crane entered their appearance as her attorneys (R. 40). Thereafter the case was set for trial on the issue of just compensation for June 13, 1955, at the

head of the trial call (R. 42), and on that date an order was entered that the substitution of attorneys filed on May 23, 1955, by Wisch & Crane be withdrawn and that the appearance of Joseph O. Kostner stand as the appearance for Mrs. Kostner (R. 42).

After the change of venue was granted on April 28, 1955, Judge Carrier entered three orders, the first on May 4, 1955, setting the trial "on the issue of just compensation" on May 23, 1955 (R. 40); the second, on stipulation of Mrs. Kostner's attorney, consolidating the parcels owned by her for the purpose of trial "on the issue of just compensation" (R. 41), and the third, on May 31, 1955, setting the trial "on the issue of just compensation" for June 13, 1955 (R. 42). At no time throughout this period was there any intimation of a desire to file a traverse.

On June 13, 1955, when the case was called for trial on the issue of just compensation, Mrs. Kostner presented her verified petition for leave to file a traverse (R. 43) and at that time a new law firm, namely, Mortimer, Nolan, O'Malley & Dunne, entered their appearance as associate counsel for Mrs. Kostner (R. 48). The petition for leave to file a traverse was denied and on June 13, 1955, there was a jury trial on the issue of just compensation. The jury verdict was set aside on the court's own motion for reasons not here pertinent (R. 48).

On October 24, 1955, a second trial was commenced on the issue of just compensation and Judge Carrier's illness necessitated a mistrial order (R. 48, 49). The cause was again set for trial on February 6, 1956 before Judge Erza Clark. Three days prior thereto Mrs. Kostner's attorneys filed a motion, together with an affidavit, requesting that the order entered on June 13, 1955 denying leave to file a traverse be reconsidered (R. 49). This motion was denied.

A jury trial was then had on the question of just compensation resulting in a judgment ascertaining just compensation for Mrs. Kostner's parcels of land, and the appeal to the Illinois Supreme Court followed.

We quote from the opinion of the Illinois Supreme Court: "It hardly seems necessary, in view of the foregoing history of this proceeding, to discuss reasons or precedents in support of our conclusion that this judgment should be affirmed" (Page 5a of the petition of Florence Kostner herein).

ARGUMENT.

There is no denial of due process in this case and no Federal question is involved. The Petitioner herein filed her appearance in the lower court on May 14, 1953. On January 26, 1954 the court entered its order requiring all defendants desiring to file a traverse or other motion contesting the right of the Commission to condemn to do so within seven days from the date of the order. At no time during this period of eight months did Petitioner herein file or ask leave to file a traverse or other pleading. Due process of law is satisfied if a party has had a reasonable opportunity to have a hearing (*Simon* v. *Craft*, 182 U. S. 427, 437; *Iowa Central R. Co.* v. *State of Iowa*, 160 U. S. 389, 393-394; *Dohany* v. *Rogers*, 281 U. S. 362, 369).

Furthermore, at the time of the entry of the order of January 26, 1954, the attorney then representing the Petitioner herein, stated to the court that he did not intend to file a traverse or other pleading but would abide the result on other traverses then on file. This appears in the record of this proceeding (see foregoing Statement of Case and R. 72), despite Petitioner's statement to the contrary.

The propriety of the order of January 26, 1954 is a matter of state court procedure and was approved by the Supreme Court of Illinois in its opinion in the instant case (see Appendix A to the Petition herein). No Federal or constitutional question is involved in a matter of state court practice (*Yazoo & M. V. R. Co.* v. *Adams*, 180 U. S. 1, 9; *Iowa Central R. Co.* v. *State of Iowa*, 160 U. S. 389, 393-394; *Simon* v. *Craft*, 182 U. S. 427, 437; *Jordan* v. *Massachusetts*, 225 U. S. 167, 174).

No request was made by the Petitioner herein for leave to file a traverse until February 11, 1955, more than one

year after the entry of the order of January 26, 1954. Action upon such request rested wholly in the discretion of the Court. The facts in this case clearly demonstrate that the trial court did not abuse its discretion in refusing leave to file a traverse at that late date. The Supreme Court of Illinois sustained the action of the trial court. The exercise of discretion by a state court does not raise a Federal or constitutional question (*Yazoo & M. V. R. Co.* v. *Adams*, 180 U. S. 1, 9; *Gormley* v. *Bunyan*, 138 U. S. 623, 629; *Carr* v. *Nichols*, 157 U. S. 370, 371).

CONCLUSION.

The decision of the Supreme Court of Illinois is correct. Upon the record herein, and for the reasons stated, it is respectfully submitted that no Federal or constitutional question is here involved.

Wherefore, it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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